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To Be or Not to Be a European Energy Union: Drivers of European Energy Policy from a Historical Institutionalist Perspective

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Declaration

I confirm that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where stated otherwise by reference or acknowledgement, the work presented is entirely my own.

Ingmar Versolmann

Wednesday, 30th October 2019

Abstract

Energy is of vital importance to the economy of the European Union (EU), safeguarding stability and prosperity for its Member States and citizens. Cooperation in energy policy was enshrined as a cornerstone in the EU's founding treaties, through the European Coal and Steel Community (ECSC) and the Euratom Treaty. However, energy policy was initially characterised by limited and shallow integration, with the first measures to integrate the policy area implemented 40 years after the foundation of the ECSC. Within this context, the Commission has taken an ambitious stance and proposed an umbrella institution to embrace the various dimensions of energy policy: the European Energy Union. This thesis aims to assess the factors and mechanisms that lead to integration, including both the internal and external dimension of European energy policy. In order to achieve this, it utilises Historical Institutionalism as a theoretical tool, which stands between rational choice *and* sociological approaches to the study of institutions. Based on the notions of path dependence, institutional lock-in and institutional inertia, the project analyses how the institutional matrix both constrains and enables different actors' political strategies. This is accomplished through a comprehensive analysis of primary and secondary legislation, historical documentation, communications, supplemented by primary data gathered from interviewing decision-makers and experts in Brussels. Process-tracing is applied to test four hypotheses regarding integration of the energy sector from the inception of the ECSC to the Energy Union. It assesses under what premises initial legislative proposals were made, identifies critical junctures that enabled institutional change, and determines which key players were pivotal in formulating policy proposals, ultimately culminating in the policy package for the Energy Union. Ultimately, this PhD thesis seeks to answer the question *under what conditions does integration occur in the policy area of energy over time?*

Lay Summary

This doctoral thesis analyses the integration of European energy policy. Energy policy is of vital importance for the European Union (EU) as it safeguards the economic stability and prosperity of its Member States and citizens. Cooperation in energy policy was included in the EU's founding treaties, through the European Coal and Steel Community (ECSC), which sought to regulate coal and steel at the European level, and the Euratom Treaty, which established the European Atomic Energy Community. However, energy policy was initially characterised by limited cooperation at the European level. The first measures to integrate the policy area were implemented 40 years after the foundation of the ECSC. Moreover, laws that would ensure a comprehensive approach to energy policy have not yet become a full reality. Be it the inefficiencies of policy measures to complete the internal market, or gas disputes between third country suppliers jeopardising the security of supply, the EU faces a multitude of challenges regarding energy policy. Within this context, the European Commission proposed an ambitious umbrella institution to govern the various dimensions of energy policy: the European Energy Union. In spite of these ambitions, differences in national preferences over the nature of European energy policy, often based on distinct energy systems and specific historic legacies, make it challenging to achieve the proposed goals. This thesis aims to assess the factors and mechanisms that lead to policy development in the energy sector. To achieve this, it utilises a historical approach to analyse the cooperation of Member States, from the inception of the ECSC and Euratom Treaty, to the proposals for a European Energy Union. The thesis analyses under what conditions initial legislative proposals were made, identifies critical moments that influenced the development of policies, and determines which players were key in formulating the policy proposals. This is accomplished through a comprehensive analysis of legislation, historical documentation, communications, and data gathered from interviewing decision-makers in Brussels. Ultimately, this doctoral thesis seeks to answer the question *under what conditions does integration occur in*

the policy area of energy over time? The project contributes to existing research on this topic by providing a thorough analysis of energy policy over a 70-year period and furthering our understanding of the way initial policy developments led to subsequent integration.

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“Nothing is possible without [wo]men, but nothing lasts without institutions.”

(Jean Monnet)

Introduction

With measures to complete the internal market and gas disputes unsettling the security of a stable supply of energy, energy has become one of the most important and prominent issues on the agenda of the European Union (EU). Whether it was European Commission President Jean Claude Juncker, who prioritised Europe's Energy Policy and committed himself to transforming energy legislation into a European Energy Union during his term in office (Juncker 2014: 5-6), or the on-going manifold disputes regarding the construction of pipelines and security issues associated with geopolitical unrest (Gloystein & Zhdannikov 2014), a common European Energy Union with a comprehensive policy approach appears to be at its dawn, promising momentum to significantly influence many other policy areas and enrich the acquis communautaire. The Energy Union, as a highly ambitious and contested project of the EU, may become one of the ultimate stress tests of political and economic integration. Much has been achieved on the internal and external dimensions of energy policy during the last decade. However, many issues remained in limbo between the aspirations of supranational institutions, national preferences of Member States in the intergovernmental domain, and geopolitical realities posed by third country suppliers to leverage their own political ends. To tackle various pervasive shortcomings, the Commission proposed plans in 2015 to deploy a fully integrated internal market, to ensure the security of supply, improve energy efficiency, decarbonise the economy, and implement a research, innovation and competitiveness strategy (European Commission 2015a-c). Energy policy has gained ample significance as major decisions have been implemented, and researchers have analysed different driving factors for, and obstacles to, further policy developments and integration in this area.

This research project therefore contributes to a growing body of work on the politics of European energy policy. It seeks to answer the question *under what*

conditions does integration occur in the policy area of energy over time? Moreover, my research gauges to what extent integration has been accomplished – and which shortcomings can be identified that might become future target areas to coherently integrate energy policy. In addition to the overarching question, it also addresses the following sub-questions to add analytical depth to the analysis: why were external issues not addressed in the 'early days' of energy policy? Why has integration on the internal dimension progressed so slowly? Why does the EU state the need for an Energy Union at this point in time?

Historical Institutionalism (HI) will provide the theoretical backdrop of this research; EU scholars have increasingly utilised HI to analyse temporal aspects of European integration, including feedback mechanisms, lock-ins, and path-dependence (Pollack 2008). The approach is recognised for its potential to explain specific characteristics of the policy making process, drawing from both macro-historical insights (HI), and from micro foundational (rational choice) assumptions (Thelen 1999). The latter is actor centred and conceives outcomes as the actions and strategic behaviour of individuals, whereas the former stresses the assumption that interests are structurally given (ibid.). Thelen (ibid.) argues that a cross-fertilisation should take place, whereas researchers might "strive for creative combinations that recognize and attempt to harness the strengths of each approach" (ibid.: 380). Pollack (2008) goes even a step further as he "does not consider historical institutionalism as a distinct and competing school of thought, but rather as a particular variant of rational-choice theory emphasizing the importance of time, feedbacks, sequencing, and path-dependence in the study of politics" (ibid.: 4).

The concept of path dependency is a key concept in this research, suggesting that 'lock-ins' hamper actors' abilities to amend policies once they are introduced (Pollack 1996, Stacey & Rittberger 2003, Pierson 1996). In addition, norms and values are incorporated in the model to answer questions

about the *preference formation* of different actors, reflecting a sociological approach (Bulmer 1998, Thelen 1999). This step is particularly beneficial as many proposals and decisions on energy policy refer to ideational factors, like the notion of solidarity and trust between Member States. The decision to employ and incorporate both rational choice and sociological approaches is derived from historical institutionalism's ambition to stand between these two views, however, placing an emphasis on temporal processes and the historical context of institutional evolution (Pollack 2008, Steinmo 2008, Wiener & Dietz 2009). This choice is discussed in greater detail in the theory section of this paper.

Building on existing HI approaches, this research project offers three significant theoretical contributions by developing a more fine-grained and nuanced ontology of core concepts and a systematic approach to their operationalisation. The notions of temporal processes including path-dependence, critical junctures, increasing returns and positive feedbacks, institutional stickiness and institutional lock-ins are concepts that are closely associated with HI to capture the phenomenon of institutional persistence and transformation. They are used to answer the question of why institutions stay on a specific path over time, and how and when change is instigated (Arthur 1988, Scharpf 1988, North 1990, Thelen & Steinmo 1992, Pollack 1996 & 2008, Pierson 2000 & 2004, Peters et al. 2005, Capoccia & Kelemen 2007, Fioretos et al. 2016). Although path dependence is such a central component of HI, the literature can fall short regarding how to operationalise the concept and render these temporal processes visible. Thus, this project's first contribution is the development of a methodological model to overcome this shortcoming and proposes a way to operationalise path dependent processes. Secondly, the project offers insight into the notion of critical junctures. It deploys a model which distinguishes between distinct forms of critical junctures, which in turn address different levels of the institution. It posits that critical junctures exist for the institutional matrix in its entirety, amending primary legislation in the form of treaty law; and they exist as smaller events,

which have an impact on a specific sector, but do not alter the institutional trajectory as a whole, therefore affecting secondary legislation. The third contribution of this research project is the application of a framework that proposes that the logic of preference formation is rooted in the situational and institutional context, instead of predefined motivations for preferences. Both choices based on rationality and calculated self-interest on the one hand, and normative and ideational factors on the other, define the actions of different institutional players and inform the decision-making process. According to the applied framework, the situational context is an important factor influencing these patterns, along with the proposition that the role of timing and the specific sequence of events determine the institutional trajectory.

These theoretical contributions are obtained through a comprehensive analysis of driving factors that sparked developments in energy policy. The Lisbon Treaty, which changed the requirements on how legislation is proposed and adopted, and the three Energy Packages, together with the creation of the Single European Market (SEM) through the Single European Act (SEA) (the internal dimension), will be central points of reference. Lisbon changed the voting rules in a wide range of policy areas, and energy policy per se became a formal competence of the EU. Hence, with the adoption of an energy chapter in the Lisbon Treaty, energy policy was explicitly brought into the remit of the EU for the first time (Duffield & Birchfield 2011). It will be fruitful to depict the factors that made such a development possible and, from a Member State's perspective, desirable or even necessary. The introduction of co-decision in the Lisbon Treaty (Maltby 2013) might have informed integrative steps in the field of energy, or put differently, might have made further steps possible. The three Energy Packages were adopted to create and subsequently complete the internal energy market, and will serve as a means to put the policy field into a historical context. The packages were the initial steps taken by the EU after the inception of the SEM programme and a direct consequence of the SEA. Furthermore, for an analysis from an HI perspective, it is also worthwhile assessing the timespan when the predominant alignment of the EU was

characterised by stark institutional inertia with respect to policy development in the energy sector. Such an analysis furthers our understanding about the factors that lead to lock-ins and lay bare institutional predispositions and settings that impede deeper integration of a policy area. Especially, from an HI perspective, the analysis of factors that evoke institutions to be locked-in and immobilised is an expedient endeavour. The HI scholar sees the present as an outcome of, and dependent on, sequential events from the past. Hence, in order to fully understand deeper integration of a policy area, or the absence thereof, it is paramount to embed past events into the analysis as contemporary policy developments are contingent on preceding incidents. The feature to incorporate the past as an analytical reference point for the present is often inadequately addressed (or omitted entirely) when explaining contemporary policy developments. Hence HI fills this gap to understand temporal processes in terms of institutional change.

Both the internal and external dimension of energy policy are intrinsically interwoven and, thus, should not be analysed separately. The internal dimension directly affects the external dimension and vice versa. For instance, if legal provisions are implemented to regulate certain features of the internal energy market, like the requirement of unbundling energy suppliers from generators in the Third Energy Package, investors from third countries might find fewer incentives to get involved in the exploration of the European markets as they might not concur with their own preferences. This in turn has a direct effect on the security of supply and the stability of the energy system. In addition, third country suppliers might use the ‘supply leverage’ to exert pressure on EU’s policy makers. The EU is heavily reliant on energy imports; a disadvantageous situation that can be exploited by supplier countries to achieve political ends. As put forward in this short example, an analysis of both dimensions and their interconnectedness will enable a more comprehensive and holistic understanding of the policy area. Moreover, I am incorporating exogenous factors and external shocks / constraints as possible critical junctures in the analysis (e.g. Russian/Ukrainian gas disputes; different oil

crises in the 1970s; etc.) as they will help to derive an explanation for preference formation of actors and how ideas about deeper integration are generated due to external forces.

It should be noted that a decision to exclude environmental policy was made early on in the project, due to concerns regarding feasibility, and to enable more empirical depth in the analysis. It was beyond the scope of this project to analyse environmental concerns and climate change in the context of energy policy due to the sheer volume of legislation. The breadth of legislation from the Coal and Steel Community to Euratom, the Single European Act to the Lisbon Treaty, up to the Energy Union, provided extensive empirical data for a longitudinal study. Adding an additional layer would have jeopardised the quality and depth of the analysis. However, one can posit that institutional stickiness also affects environmental policy in the context of energy policy. For instance, the phenomenon of carbon lock-in and the path dependent processes of specific technological developments in renewable energy warrants further research[1]. Furthermore, it should be noted that environmental issues could be seen as another external factor / variable influencing policy-making in energy. It is the author's intention to examine this dimension in future research.

The contribution of this project to the existing empirical literature on European energy policy is its unique approach to gauging temporal processes and its appraisal of the role of institutions *together with* different actors. Such an undertaking will contribute to the structure/agency debate, deploying an in-depth understanding of institutional inertia, path dependent processes, and critical junctures in accordance with European integration. A central focus of this research project is a way to operationalise various degrees of institutional inertia, understood the degree of institutional stickiness. An intriguing aspect of this analysis is the inherent fluidity of energy policy due to an on-going

[1] See: Unruh (2000): Understanding carbon lock-in and Lockwood et al. (2017): Historical institutionalism and the politics of sustainable energy transitions: A research agenda.

discourse among Member States, the ‘incompleteness’ of the policy area and the demand of certain Member States for further integration (along the lines of more integrated policy fields like the common commercial policy/ customs union/ competition/ monetary policy).

Research puzzle

Energy policy has been an attribute of the European integration project from the very beginning, through the European Coal and Steel Community (ECSC) and the Euratom Treaty. Regional integration was meant to serve as a means to secure peace in Europe through the creation of a common market for coal and steel. The rationale behind this step was to forge resilient economic and political ties between France and Germany to facilitate the reconstruction of Europe. The common market for coal and steel, the two commodities constituting the backbone for the industry at that time, would advance pace building efforts through economic integration and mutual interdependence. Simply put, without coal and steel, no war. Furthermore, the Euratom Treaty, which was implemented in 1957, was established to create a community policy regarding the supply of nuclear power and to develop a potent nuclear industry (Matlary 1996). Although energy policy could be considered part of the very core of the EU, it is a near-paradoxical situation that energy policy was not as comprehensively and effectively integrated from the beginning as were other policy areas. Put differently, Commission recommendations that were made between the 1960s and the 1980s (European Commission: 1968, European Commission: 1972b, European Commission: 1981) were “largely ignored by the Council and the Member States” (Maltby 2013: 438, see also: Kirchner and Berk 2010). However, it is necessary to mention at this point that energy legislation was not *completely* absent as regulations and decisions were implemented. Energy policy was rather stuck in a structurally induced gridlock due to certain adverse conditions posed by the institutional design and choices

regarding the energy mix, which I will discuss in greater detail in the following analysis.

Energy was part of the European project from the outset but has over the years not been supranationalised like other policy areas (for instance, the common commercial policy or the common agricultural policy; also, energy markets were incorporated quite late into the internal market programme). It seems to have successfully resisted various 'neofunctional' pressures to a certain degree, the specific impetus based on economic interdependence, which students of European politics might identify as causes for further integration, from the 1950s until the early 1990s. In the first 40 years following the creation of the EU, Member States considered energy a sovereign business (McGowan 2008). Nevertheless, issues surrounding energy markets and energy security arise in functioning economies as a fundamental backdrop (due to the vital importance of energy to their economic performance) and constitute pivotal core issues of every EU Member State. Simply put, without energy and a reasonable policy on energy, a sovereign state and its markets are simply not viable. And yet, although other core policies in the EU developed further, comprehensive integration did not take place in this area, and where integration was attempted it only achieved limited and rather modest success.

National solutions dominated the policy landscape, which were contrived through bilateral and intergovernmental agreements with supplier countries. Electricity and gas markets were monopolised, National Oil Companies (NOCs) championed the national markets and led to highly concentrated energy markets, with no room to manoeuvre for external investors. There were few if any technical regulations and infrastructure plans, and the absence of physical interconnections and grids made trade between Member States cumbersome or simply impossible. Community action was virtually not set out until the 1990s (Maltby 2013). The creation of the Single European Market (SEM) eventually incorporated the internal dimension of energy policy under the single market umbrella. This move made it possible for the EU to take a

more ambitious stance. Major decisions were implemented in the mid 1990s relating to the internal market but demanded further legal provisions as they did not prove to be effective enough to tackle various issues concerning the regulatory environment and the security of supply. On the external dimension, no effective community action whatsoever was laid out until 2010 (with an ineffective Council Directive implemented in 2004), which seems surprising given the salience of issues concerning the security of natural gas supply. As with other policy areas, there is traditionally a reluctance to give away information on how Member States conduct their energy policy regarding relations with third countries, and under which contractual premises these bilateral agreements were made. This reticence raises some important questions for the understanding of the policy area: why were external issues not addressed in the 'early days' of energy policy? Why has integration on the internal dimension, although formulated and initiated, progressed so slowly (and is still not complete)? Why does the EU state the need for an Energy Union at this point in time?

This research is particularly timely given that major legal provisions were made within the last 20 years, thereby making data/sources accessible for academic scrutiny. The project will help to understand the driving factors towards deeper integration in a contested policy area that is characterised by divergent interests of Member States (due to their respective energy mixes and historical legacies), and their expectations about how a common policy should be created and what it should comprise. Moreover, it will investigate the factors that caused the institution to remain in considerable inertia for almost 40 years and which made policy development almost impossible.

Literature review

The following section provides an overview of existing literature that is relevant for this thesis, which can be divided into four categories: historical accounts

and comprehensive volumes on the evolution of energy policy towards an Energy Union (for the sake of brevity in some instances referred to by their editors); research that addresses the external dimension of energy policy; efforts to create and liberalise a common internal energy market; and the European Commission as a policy entrepreneur and driver of deeper integration.

Although the academic literature on the historical evolution of the policy field is rather scarce, some scholars have been intrigued by the topic and used different approaches to analyse it. The first thorough assessment of energy policy in the ECSC, EEC and Euratom was conducted by Lucas (1977). This comprehensive research, is an invaluable account of the proceedings of various actors and institutions from the inception of the ECSC until the mid-1970s. Not only did the research meticulously depict Member States' preferences regarding their policy instruments, it also takes account of the different energy sectors (coal, oil, gas, nuclear energy). Lucas ultimately argues that the most important crossroad was the missed opportunity to confide in petroleum products instead of blind faith in nuclear energy that ultimately hampered deeper integration in the early days.

The second invaluable book-length assessment of the policy area within the historical context was provided by Matlary (1997). By using competing theoretical perspectives, amongst them Neofunctionalism, Multi-Level Governance and Policy Network Analysis, she provided a comprehensive analysis of energy policy of the 1950s to the mid-1990s, with an emphasis on the policy developments after the Single European Act. She identifies energy suppliers and Member States, with their specific historic legacies and diverging preferences based on economic reasons and security concerns, as the main opponents of a common energy policy, however, stressing the fact that the energy sector became more integrated due to the single market programme.

Addressing different dimensions of energy policy, Schubert et al. (2016) provide a thorough and holistic account of historical developments; the main actors concerned with the process of decisions making; the common internal energy market; climate change, energy efficiency, and renewable energy sources; and the external policies of the Union. Their research provides an overview of all the prominent themes to be found in the energy sectors, drawing from an impressive range of legislation, primary sources and secondary literature. Buchan & Keay (2015) deploy a coherent analysis of the EU's endeavours towards a common energy policy and its plan to create an Energy Union. They address all the main themes of the policy field and conclude that a move towards more Europeanisation is necessary to avoid renationalisation of energy policy. To this end, the authors call for a new overarching institutional arrangement under which Member States should concede more competences to the Union.

The second important book-length contribution which analyses the path to, and the status quo of, the Energy Union is edited by Andersen et al. (2017). The volume analyses the stimuli and factors that contribute to the demand creating an Energy Union, the security dimension of energy policy, policy tools that are at the EU's disposal, and the main actors that contest the Energy Union. The main argument promotes the proposition that the Union, although pursuing a liberal approach to international political economy, transformed its regulatory approach towards a regime that the authors call 'liberal mercantilism', to augment its own power. In this respect, the Energy Union marks a crossroad away from an approach based on market-building and competition (a pure liberal model) towards one in which the EU utilises its market power for political ends in the shape of increasing energy security.

The second important group of contributions that are relevant for this thesis focus on energy security issues and, as an adjacent theme, the EU's relations with Russia and other major supplying countries (Winzer 2012, Kaveshnikov 2010). Winzer (2012) conducted a comprehensive assessment of existing

literature on energy security to garner different conceptualisations of the term that allowed for a translation into quantifiable measures. As different conceptual frameworks led to stark variations in outcome, they highlight the need to carefully define the concept of energy security dependent on the research and proposed a narrower definition. Different dimensions of energy security in Europe are addressed in an edited volume by Szulecki (2018), providing a comprehensive contribution to the literature, which depicts the multitude of issues concerning internal dynamics and external policy challenges. Youngs (2009) focused specifically on the foreign policy dimension of energy security by bridging three areas of the debate: market-based versus geopolitical strategies; the relationship of energy security contingent on the governance in producer states; and the EU's capacity to act as a foreign policy actor. The findings suggest that, although energy security gained in importance to the Common Foreign and Security Policy (CFSP) since the mid-2000s, divisions between Member States regarding the scope and nature of external action made it quite difficult for the Union to speak with one voice and attain predefined goals. In a similar vein, Haghighi (2007) provides a comprehensive account of the internal and external measures concerning the security of oil and gas supply in Europe up to the mid-2000s, utilising case law and relevant legislation. The research also addresses relations of the EU with the major oil and gas producing countries of Russia, the Mediterranean, and Persian Gulf countries.

Following Regional Security Complex Theory and gauging the pros and cons of regional and inter-regional energy cooperation, Kirchner and Berk (2010) propose that a comprehensive common energy policy and greater European cooperation can be expected due to liberalisation of energy markets, efforts to introduce a super grid of power supplies, and the spin-off from environmental policy, but that EU-Russian energy relations will stagnate rather than improve. From a rational choice perspective, it has been shown that aggregated rational self-choices of Member States steer EU collective action towards Russia (Bozhilova & Hashimoto 2010). Situated in an Intergovernmentalist approach,

Pointvogel (2009) argues that there has been a shift in priorities in energy policy towards emphasising supply security. The main drivers for deeper integration are Member States' perceptions of energy supply security, which is in turn significantly shaped by energy business' considerations. These factors shape and influence the willingness of Member States to further integrate energy policy and implement existing legal provisions, most significantly regarding the creation of the internal energy market. Utilising a regime theoretical approach, Padgett (2011) evaluates to what degree the EU's endeavour to diversify sources of supply and delivery routes are successful. The EU approaches potential energy partners across wider Europe within an institutionalised regime based on the norms of the internal market. His findings suggest that energy consumers in the EU's neighbourhood are willing to implement multilateral institutions, but co-operation with energy producers is constrained by asymmetries of interest and regional geopolitics.

Drawing from literature on the EU as a civilian power and from a system of governance perspective, Lavenex (2004) suggests that the EU should be conceived as a polity in the making, with its own perceptions of roles, responsibilities and threats. Against this backdrop, it was shown that the EU's neighbourhood policy serves as an external governance tool in energy policy through which the EU disseminates parts of its norms, rules and policies. However, using a new institutionalist framework together with the notion of socially constructed ideas, Kuzemko (2014) argues that the market liberal approach is not the only influential factor for the evolution of energy policy and contested by the ability of ideas to be influential in energy matters. Ideas are important explanatory variables concerning relations with Russia that go beyond materialist explanations of deteriorating relations based on Russia having resource assets (conducting incorrect market reforms) and the EU being an importer. Here, Russian energy governance changes are not the product of superior fuel assets and power politics, but are the consequence of embedded ideas about the socioeconomic role of energy.

Another prominent theme in the literature, which is relevant for this thesis, addresses the internal market. Scholars agree that efforts to liberalise energy markets are inherently interconnected with the external dimension. Completing the internal market, and in this context, the full unbundling via the implementation of the Third Energy Package was defined as a measure not only to enhance energy security but also to align Member States' preferences towards third countries. Moreover, the creation of real gas markets with solidarity provisions would diminish Gazprom's ability to play Member States off against each other (Grätz 2009). In a similar vein, market liberalisation was identified as the momentum for further integration, a principle of internal policy making and energy diplomacy. As the internal and external dimension are intrinsically interwoven, the strategy of market opening has been important to maintain energy security – and has been successful, especially in respect to countries which aspire to join the EU. However, this strategy might not be effective regarding countries who do not strive for membership (McGowan 2008).

Other scholars analyse the regulatory framework and the rules governing energy markets. Del Guayo et al. (2010) took stock of the effect that Ownership Unbundling (OU) – the separation of supply/generation activities from transmission network activities – has on property rights of gas and network owners. The research provides an account of the process of energy liberalisation in the EU over time, and the ramifications OU (as part of the Third Energy Package and the wider approach to liberalise energy markets) has for Member States with different preferences and opinions towards this potent policy tool. Yafimava (2013) assesses the Third Energy Package, including the Gas Target Model (a collection of regulatory steps to achieve a single EU gas market), the network code for a Capacity Allocation Mechanism (EU-wide rules on harmonising auctions selling access to pipelines), and the regulatory challenges it imposes on non-EU-suppliers, in particular for Russia, who is most affected by the energy package. By conceptualising national energy policy as a path dependent process, Baumann and Simmerl (2011) gauge the

potential of the EU's internal energy policy and the different attitudes of the Member States towards the external dimension of a common energy policy. Their findings suggest that the finalization of the internal energy market is a priority but can only be successful if accompanied by progress in the external dimension.

Utilising the three-tiered agenda-building model, and embedded in a systematic historical analysis, Ciambra & Solorio (2015) have shown that the current paradigm to energy policy in the EU has its roots in the goals, regulatory customs, and market-driven approach derived from policy-making in the United Kingdom. A valuable contribution for this research project was provided by Eising (2002), who empirically showed how institutional norms affected the process of liberalisation of the European electricity supply industry. He concluded that shared norms (the consensus norm and reciprocity norm) and the concept of market integration permeating the institutional framework were constraining factors for Member States, however, at the same time making cooperative outcomes easier to reach and ensuring that actors' fundamental concerns would be addressed.

A thorough and concise analysis was deployed by Eikeland (2011b) who addressed the entire evolution of the process of liberalisation of internal energy market comprising all three energy packages, including the proposal and outcome of the Third Energy package, and a worthwhile account on Ownership Unbundling. Based on his findings he concluded, and in-line with the research of other scholars (e.g. Buchan & Keay 2015), that, although considerable progress has been achieved on the internal dimension, institutional reforms have been insufficient, accounted for by implementation failure of actors and because reforms have not yet gone far enough. Buchan & Kaey (2015) therefore propose a reform of the electricity markets, as the Commission, although recognising the need for change and the shortcomings of the current institutional design, does not address fundamental issues in its entirety. In addition, they argue for a more market-friendly regulatory regime, away from

technology-based approaches (realised through market intervention by Member States as these technologies are often costly), towards one in which state intervention is reduced to create a genuine level playing field and a solid basis for competition and free trade. Wood (2010), although not harnessing a distinct theoretical approach, gives a detailed account and thoroughly useful overview of Europe's energy mix - including economic and regulatory matters, environmental concerns (in particular CO2 emissions), relations with suppliers, public opinion, and concerns regarding nuclear power. Here, energy policy is conceived as a multi-dimensional field, inextricably interconnected with other policy areas.

The fourth significant group of contributions addresses the Commission as the driving factor for institutional development. Eikeland (2011a) using a theoretical framework comprised of a supranational perspective and a policy network approach, rendered visible the Commission's capabilities to take a more ambitious stance in the proposal for the Third Energy Package. The Commission was able to exert more pressure towards unwilling Member States and exercised more independent will compared to the proposals from 2003. In addition, the work has shown that the Commission utilised non-state agents and transnational networks both strategically to influence Member States and inform the proposal itself. Based on an analysis of the first gas directives employing a multiple streams framework, Herweg (2015) concluded that the rise of energy legislation on the institutional agenda resulted from the Commission’s success in framing energy matters as a competition issue, hence, providing a different view about the toolbox the Commission utilised to further deeper integration. In this analysis, the Commission exploited a policy window evoked by the uncompetitive state of energy markets and applied a competition clause of the EEC Treaty to foster an agreement between Member States who were reluctant to liberalise gas markets. Another explanation for the Commissions enhanced role in energy affairs was provided by Mayer (2008). Drawing from a HI framework, he argues that the Commission utilised path dependent dynamics to augment its role in the energy sector and to

establish itself as an important international player. The Commission presented itself as "an experienced 'solution provider' and productively engaged in coalition building with significant state actors" (ibid.: 271). Hence, the Commission shaped external energy policy toward an outcome that would not have transpired otherwise and it seemed less and less desirable for Member States to maintain an intergovernmental institutional framework.

A different view is provided by Eberlein (2008) who conceives the Commission as a principal (as opposed to the 'traditional' view by scholars that Member States are considered the principals which delegate powers to the Commission as an agent) who delegates powers to sectoral governance actors and to build coalitions with private stakeholders and sub-state regulatory agencies. The Commission endorsed this strategy to create network mechanisms that can coordinate Member States' policies and to acquire expertise of sectoral actors. Baumann & Simmerl (2011) argue that the Commission constantly increases its regulatory output to create a common energy policy. Key to success on the external dimension should be shared objectives about energy security collectively defined between Member States and the Commission, and the institutionalisation of sound procedures and instruments for maintaining external energy security. They conclude that an active role of the Commission is paramount in both cases; it is the Commission's responsibility to identify and spell out the value of pooling resources on the external dimension; and the Commission should have a coordinative role utilising a toolbox that provides a set of diplomatic, political, and other measures in case of a supply disruption. Brutschin (2016), by focusing on the liberalisation of the gas market and the evolution of policies concerning trans-European gas infrastructure, argued that the Commission, utilised network governance to better coordinate energy policy. The creation of ACER and ENTSO-G - an agency and an association entrusted with the management and coordinated operation of the European gas network, and initiated by the Third Energy Package - has proved to be very successful and helped the Commission to link market liberalisation and measures concerning gas infrastructure. As shown in the research, the

Commission's strategies depend on the environment in which it operates: hard power measures (competition law, infringement procedures) are used when there is a demand for security policies; soft-power measures (ad-hoc groups, consensus-seeking) are used to introduce step-wise advancement of energy policy.

Thesis Outline

This thesis is structured as follows. Chapter I presents the theoretical framework of this research. It elaborates on theories about European integration, then turns to Historical Institutionalism to discuss its key features, and explains and critically engages with the theoretical framework and its specificities vis-à-vis the rational-choice and sociological strand of institutionalism. Notably, the concepts of interest and preference formation, the calculus and cultural approaches, path dependency, institutional stickiness, lock-ins, inertia and equilibria, and the concept of critical junctures are expounded upon. Chapter II introduces the research design and methods and operationalisation of the main concepts; the dependent variable of integration in energy policy and how it is measured is explained. The logic informing the causal relationship between the independent and dependent variables is discussed. Finally, four hypotheses are developed and the independent and dependent variables are defined. The last section in the chapter deals with the applied methodology and case selection.

The subsequent four empirical chapters look at the case studies and test the four hypotheses. The first empirical chapter, Chapter III, analyses the institutional developments in the period between the late 1940s/early 1950s until the 1980s and test the first hypothesis. The hypothesis suggests that if no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. The chapter explores the inception and institutional design of the European Coal and Steel Community, and Euratom

and the institutional inertia that followed. Chapter IV investigates the implementation of the Single European Act (SEA) and its impact on energy policy. In doing so it tests the second hypothesis, which assumes that a locked-in institution needs a critical juncture in order to be jolted-out of the dysfunctional institutional path. Chapter V explores the incremental policy change that occurred following the implementation of the SEA, the three energy packages and the introduction of legislation on the external dimension of energy policy. This chapter tests the third hypothesis that posits that if no critical juncture occurs in a path dependent institutional setting, incremental change of secondary legislation can be expected. The last empirical chapter, Chapter VI, analyses the implementation of the Lisbon Treaty and factors that led to policy provisions under the Energy Union. It tests the fourth and final hypothesis regarding when high integration of primary law can be expected and the subsequent impact on the institutional trajectory.

Finally, the Conclusion revisits the theoretical and empirical contributions of this thesis. It begins with an overview of the four hypotheses and the extent to which they are supported by the analysis of the empirical evidence. Subsequently, the main contributions of the project are discussed in more detail and placed within larger theoretical considerations within Neo-Institutionalism. Finally, the main challenges and areas of potential criticisms are discussed and avenues for further research are highlighted.

Chapter I: Historical Institutionalism as a Theoretical Framework

The debate about the nature of the EU has created a remarkable output of theoretical assumptions about the governing processes and the factors explaining further integration. Two grand theories that have dominated the academic discourse for several decades and arguably resulted in a rather

sterile and gridlocked debate on what the EU is or how transformation within its institutional setting occurs. The two diametrically opposed approaches focus on either the dominance of Member States' powers - the (Liberal-) Intergovernmentalist view - or emphasise the supranational momentum of integration - the multi-level governance (MLG) / policy network / (Neo-) Functionalist model. They provide a good backdrop to further elaborate on theoretical approaches, as some of their assumptions were incorporated in subsequent theories (markedly, New Institutionalism).

1.1 European integration theory

Neofunctionalism was conceived as a theoretical framework to contribute to the study of European regional integration. It rejects Realism and Neorealism, retains affinities to neo-liberal institutionalism and liberalism, and accepts a kind of soft rational choice ontology (Haas 2001). As Haas contends, states engage in cooperative behaviour according to their intended goals and their preferences:

> "Political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the pre-existing ones" (Haas 1958: 16).

Neofunctionalists believed that integration would occur in the form of an automatic process as a consequence of societal and institutional actors who create a demand for services that the institutional setting can provide (Haas 2001). Neofunctionalism focuses on the process of integration in general as opposed to focusing on background conditions or the end product of the process of European integration (Cram 1996: 44). This process of integration

is facilitated through the automatic process of spillover, which is self-sustaining, rational and teleological, and which denotes the process in which actors shift their expectations for further integration towards supranational institutions. Actors support these new supranational institutions because they provide outcomes that are in line with their own sets of preferences. Based on economic integration, initial decisions to integrate a sector create pressure for deeper and wider integration. A given action of an actor to realise a predefined goal creates the situation in which the original goal can only be attained by taking further actions, which in turn creates demand for more action, and so forth (Rosamond 2006: 244). An important factor contributing to the spillover effect is the increase of economic interdependence between actors who find themselves increasingly entangled in regional pressures and resolve these by conceding more powers to the regional organisation (Schmitter 2005: 257).

On the other hand, the diametrically opposed theoretical framework of Liberal Intergovernmentalism (LI) sees Member States in the driving seat of regional organisations, without functional pressures automatically contributing to deeper integration. According to LI, Member States have the capacity to shape EU institutions to their will as a consequence of their respective bargaining powers. At the core are three essential elements: the assumption of rational state behaviour, a liberal approach to the formation of preferences, and an Intergovernmentalist analysis of interstate negotiation. Member States have primacy over their institutional choices and decisions at all times and, hence, “the EC is best seen as an international regime for policy coordination” (Moravcsik 1993: 480). In order to achieve their predefined goals, Member States engage in interstate bargaining and goal-attainment is not dependent on a centralised authority, as suggested by Neofunctionalism. Strategic state choices are the reason for cooperation and Member States constantly evaluate potential alternative choices during negotiations (Moravcsik & Schimmelfennig 2009: 68).

These discourses resulted in a binary and one-sided perception of the actors involved, emphasising either the dominance of Member States over supranational bodies or vice versa. The Intergovernmental approach did not take into account why certain proposals by institutions eventually resulted in a change in policy, and the Functionalist rationale was not able to explain why at some point integration slowed down or came to a halt. Apart from their purpose to explain integration from their particular standpoint, these two approaches were not able to analyse possible intervening variables or occurrences that conflicted with their assumptions. For instance, Neofunctionalism is not suited to explaining energy policy in its historical context, as it assumes that integration in one sector exerts functional pressure (or 'functional spillover') to integrate other sectors. Following this rationale, energy policy should have been integrated much earlier as, for instance, certain sectors were integrated at the EU level but a common approach was not instigated until the 1990s. Therefore, the concept of economic spillover does not provide much explanatory value (at least not until the 1990s). On the other hand, Liberal-Intergovernmentalism provides a slightly better tool to analyse energy policy and decision-making, as the framework considers Member States in the driving seat with no institutional pressure influencing their decision-making – an assumption that can be observed in the 1960s/70s/80s. However, it does not provide much explanatory value for later periods. In the 1990s the institutional framework and institutional powers were considerably strengthened. Hence, the improved institutional design influenced and constrained actors' options in terms of decision-making, much more than in the previous decades, and Member States were not always in the driving seat. Moreover, and most importantly, the framework is more suited to explaining big decisions – like Treaty changes – and is not suited to analyse day to day politics or smaller events that might be relevant for the policy area.

To account for the shortcomings of the aforementioned theories, my research proposes to utilise HI, a mid-range theory that is part of the new institutionalist

literature. The following section will offer a comprehensive discussion about the features of historical institutionalism.

1.2 Historical institutionalism as a theoretical framework for the study of energy policy

HI will be applied as the overarching theoretical approach used in this research. It emerged with the revival of institutional theories in the late 1980s, which found their way into European studies by the early 1990s. It must be noted here that the 'old' institutionalism (the 'predecessor' of new institutionalist forms; before the behaviourist revolution of the 1950s) could be deemed a rather descriptive approach, incorporating descriptive juxtaposing accounts of institutional settings in its analysis, with no explanatory capacities that could facilitate comparative research, unlike the new institutionalist tenets (see Thelen and Steinmo 1992, Peters 2012). The new institutional approaches and their success in political science can be attributed to "overcoming the impasse of intergovernmentalists/ neofunctionalist debate" (Pollack: 1996: 430), offering viable analytical tools to understand and gauge the role European institutions play during the integration process.

This project builds on the work of Arthur (1988), Scharpf (1988), North (1990), Thelen & Steinmo (1992), Pollack (1996, 2008), Thelen (1999), Peters et al. (2005), Capoccia & Kelemen (2007), Pierson (2000, 2004), Steinmo (2008), and Fioretos et al. (2016). It fits into the wider literature on HI by further developing concepts of temporal processes, such as path-dependence, critical junctures, increasing returns and positive feedbacks, institutional stickiness and institutional lock-ins. It expands on the phenomenon of institutional persistence and the constraint actors face over time, to answer the question of why, once a specific path is taken, departures or deviations from this path become less likely and how and when change occurs. Moreover, it elaborates on the formation of actors' specific preferences.

Institutions are understood as actors and structures in which agency is embedded (Saurugger 2014). Although very diverse in their assumptions, institutionalists agree on one premise, namely, that 'institutions matter'. Different strands evolved within the approach, such as rational choice institutionalism, historical institutionalism, sociological institutionalism and discursive institutionalism (Hall & Taylor 1996, Saurugger 2014). These theories evolved as a reaction to behavioural approaches that dominated political science in the 1960s and 1970s (Hall & Taylor 1996), which considered political phenomena the aggregate consequence of behaviour at a group or individual level, defining actor's preferences and power exogenous to the political system, and portraying formally organised institutions simply as arenas in which political behaviour occurs (March and Olsen 1984). Institutionalists, on the other hand, consider institutions not just as facilitators of exchange between actors, but rather as entities developing strategies based on self-interest (Saurugger 2014). But how should we define institutions and what are their exact features?

Such considerations are important as, contended by Mayer (2008), who used HI to study the evolution of the EU's external energy policy, institutions have an impact as they shape political outcomes (ibid.). When considering what HI could offer to the study of sustainable energy transitions, Lockwood (2017) suggests that institutions not only constrain individual choice or affect individual strategies, but also shape attempts by groups of actors to collectively pursue their interests. Hence, it is paramount to define how we can conceptualise institutions (especially, given that the word 'institution' could mean many things) and why they have a strong capacity to influence political outcomes. Steinmo (2008) succinctly proposes that "the most common definition for institutions is: rules" (ibid.: 159). Some scholars (see Streeck and Thelen 2005) bestow these rules a formal character, whereas others (see Hall 1989, Marcussen 2000) stress the informal nature of rules and norms.

> “Whether we mean formal institutions or informal rules and norms, they are important for politics because they shape who participates in a given decision and, simultaneously, their strategic behaviour” (Steinmo 2008: 159).

Against a backdrop of a new institutionalist definition encompassing both formal organisations and informal rules and procedures that structure conduct (Thelen & Steinmo 1992), HI seeks to emphasise two overarching principles that define politics: policy development unfolds over time and many of these processes are embedded within institutions (Pierson 1996). HI stresses the difficulties in reversing or substantially altering particular choices once they have been made. It depicts policymaking as a process that is characterised by long periods of substantial stability, referred to as 'path dependency', which is interrupted and punctuated by turbulent 'formative moments' (North 1990, Pierson 2000, Peters et al. 2005). This cycle is subsumed within the notion of 'punctuated equilibrium', namely that processes are characterised by stability but expect short bursts of rapid institutional change after which institutional stasis sets in again. New structures are formed during crisis, imposed through conquest or implemented by the prevailing social structure, and once in place, they develop a life of their own (Krasner 1984). These formative moments, also called 'critical junctures', are critical because they place institutional settings on trajectories which are subsequently very difficult to alter. Critical junctures are treated as the starting points for processes that follow a path dependent rationale. They are "relatively short periods of time during which there is a substantially heightened probability that agents’ choices will affect the outcome of interest" (Capoccia & Kelemen 2007: 348). Critical moments are characterised by a situation in which structural pressure (economic, cultural, ideological, organisational) is significantly reduced for a relatively short period. Most importantly, in these moments, the scope and range of possible choices, to be made by powerful actors, increase substantially, and the consequences of their choices are much more significant; "Contingency […] is paramount" (ibid.: 343). Actors face constraints regarding their choices during phases of

equilibirum, whereas they are free during phases of change. The critical moment must be brief in relation to the equilibrium. The duration has an impact on actors' capabilities to act more freely: the shorter the juncture, the more open it is (ibid.). Critical moments can be created by both internal and external forces (Collier & Collier 2002).

The theory emphasises the 'stickiness' of historically evolved institutions (Thelen and Steinmo 1992). They tend to be ‘sticky’ as the designers of organisations do not want ‘their’ organisation to fall into the hands of opponents (and be altered by them), and, due to the nature of modern democracies, can only shut these opponents out by shutting themselves out too. Once initial steps are taken, or institutional reform is initiated, it is difficult to undo these steps although they might be costly for MS or infringe on state-sovereignty (Pierson 1996). Thus, although actors posses initial primacy during institutional formation, and seek choices that align with their preferences to maximise their benefits (Pollack 1996), they nevertheless carry out policy and institutional reform (or in this regard, create institutions) that alter their position in an unanticipated or undesired way (Pierson 1996). Pierson identified several arguments why gaps – divergences between institutional and policy preferences of Member States and European institutions – emerge and why these gaps restrict Member States’ control capabilities. In this regard he lists the following accounts as sources of change: the short-time horizons of decision-makers, the formation of unanticipated consequences (e.g. high issue density – the sheer scope of decision-making in the EU diminishes the ability of Member States to control policy trajectory), the possible shift of Member States policy preferences, unanticipated sunk costs and – based on a principal agent rationale – the partial autonomy of institutions (ibid.). Pierson defines path dependency, the rigidity of institutional trajectory, as “dynamic processes involving positive feedback, which generate multiple possible outcomes depending on the particular sequence in which events unfold” (Pierson 2004: 20).

As a source for a narrow conception of the term, he refers to Levi's (Levi 1997 as citied in Pierson 2004) definition of path dependence:

> "Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the cost of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice. Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other – and essential if the chosen branch dies – the branch on which a climber begins is the one she tends to follow" (ibid.: 20).

Pierson elaborates on the notion of path dependence, in which preceding steps into one direction lead to further movement in that direction, with the concept of 'increasing returns'. Routed in economics, it suggests that due to *self-reinforcing* and positive *feedback processes,* the probability of further steps along the same path increase with every step, as the relative benefits – compared to alternatives – rise. Or put differently, the cost of exit increases (Pierson 2000). In his seminal work on the evolution of technology, Arthur (1994) defined several indicators for the rationale behind increasing returns: large set-up or fixed costs (actors have incentives to stick with a choice where initial costs were high), learning effects (acquired knowledge leads to higher returns), coordination effects (benefits increase with the number of actors), and adaptive expectations (expectations about joint usage among actors reinforces a choice) (Arthur 1994: 112). In a subsequent analysis, North (1990) argued that Arthur's categories can be applied to institutional settings. There are large costs involved when institutions are created, learning effects apply due to the opportunity set provided by institutions, contracts with other organisations increase coordination, and expectations will be 'streamlined' as the prevalent contractual environment creates stability (ibid.). "In short, the interdependent web of an institutional matrix produces massive increasing returns" (North 1990: 95).

He points out that both efficient (meaning certain mechanisms provide the best choices) and unproductive paths may exist (ibid.) The concept of increasing returns by Arthur and North provides valuable insight and explanations for an analysis of energy policy, both from an institutional and a technical perspective. Initial costs of creating a formal institutional structure to implement and coordinate different policies, production, electricity grids and transmission lines, pipelines and infrastructure are high, as are the technological solutions themselves due to competitiveness and length of time for their development (Kirchner & Berk 2010). Once initiated, learning effects among different actors improve the efficiency of institutional settings and, as contractual agreements with other institutions are made, coordination between actors increase and expectations about future events lead to stability in the system (North 1990: 95).

This model provides a useful explanation for stability and a state of equilibrium, but it tells us little about institutional change. However, to give a possible explanation for change, we have further to think about equilibrium institutions. As Pollack (1996) points out, once institutional choices are made, derived from intergovernmental bargaining based on rational expectations, institutional inertia, the consequence of equilibrium institutions, emerges due to a "combination of uncertainty, transaction costs and institutional barriers to change" (Pollack 1996: 438). Along similar lines, Scharpf (1988) provides an explanation for 'lock-ins' (to be understood in this research as the most rigid form of institutional inertia), which can ultimately block institutional evolution. He refers to these as resulting in a 'joint-decision trap'. These "pathologies of substantive public policy" are based on two institutional conditions: "first, the fact that national governments are making European decisions and, second, that these decisions have to be unanimous" (Scharpf 1988: 267). In this sense, as long as policies are placed in the intergovernmental domain (as opposed to supranational decision-making), and unanimous voting rules apply (as opposed to qualified majority voting), policy choices tend to be rigid and

unresponsive to change and “have an inherent (non-accidental) tendency to be sub-optimal” (Scharpf 1988: 267). In addition, in an ongoing joint-decision system in which unanimity applies (or any other decision rule) and in which the exit option is foreclosed (to withdraw from the system), the ‘default condition’ of the institutional arrangement pre-empts institutional development if an agreement is not achieved. This means that in an event of non-agreement the *continuation* of existing policies entrenches actors and creates the adverse condition that they have to stick to the institutional commitments even in the event of sub-optimal outcomes. As Scharpf poignantly illustrates,

> “In a dynamic environment, the implications for the substantive quality of public policy are obvious: when circumstances change, existing policies are likely to become sub-optimal even by their own original criteria. Under the unanimity rule, however, they cannot be abolished or changed as long as they are still preferred by a single member” (ibid.: 257).

This explanation for policy development offers some promising insights for energy policy: as long as Intergovernmentalism and unanimous voting rules applied in the historical context, the analysis will treat policy development as substantially hampered. A central focus of this research project is a way to operationalise various degrees of *stickiness*. In this work Scharpf’s joint decision trap only applies to ‘substantial’ lock-ins: in this sense, the *highest* possible state of *stickiness*. As it distinguishes between different degrees of institutional inertia (stickiness), it also provides different explanations for institutional change when these ‘sticky’ institutions are punctuated by critical junctures.

On the other hand, North’s definition of path dependency, and the logic of increasing returns, will be deployed for explaining mechanisms that lead to certain path-dependent policy choices, but nevertheless allowing for incremental change: in this case, a *low* state of *stickiness* can be ascertained. In the words of North:

> "Path dependence means that history matters. We cannot understand today's choices (and define them in the modelling of economic performance) without tracing the incremental evolution of institutions" (North 1990: 100).

North helps us to explain certain processes of path dependence when Scharpf's definitions of substantial 'lock ins' do not apply (intergovernmentalism / unanimous voting), as, although these processes establish institutional inertia, North's explanation still leaves room for change through "continuous marginal adjustments" (ibid.: 101). To consolidate the model: there are two modes of institutional stickiness: high (Scharpf) and low (North). Furthermore, sticky institutional arrangements, whether high or low, are subsequently punctuated by critical junctures, placing the institutional arrangements on new trajectories.

The above-proposed explanations about increasing returns are rooted in rational choice theory. However, as a complementary analytical unit, this research will also ask the question to what extent ideational factors contributed to policy decisions. In this sense, it will go beyond mere rationalist interpretations of institutional choices. It will employ *both* a rational choice approach *and* a non-rational choice approach, allowing for an analysis of both 'worlds': the strategic calculations of actors and how norms and values may have informed policy choices. Historical institutionalists tend to be eclectic in structuring their theoretical concepts; they *draw their insights from both a 'calculus' approach* (rational and strategic choices) *and a 'cultural' approach* (behaviour dependent on roles/norms/cognitive scripts/individual's worldview - derived from sociological institutionalism) (Hall & Taylor 1996, Pierson 1998). The common denominator of HI is its emphasis on temporal processes (Pierson 1998). But a fundamental question is: why should we apply either one (or both) of these two approaches to gauge institutional choices in a historical context? If there is a long-standing rivalry between these two strands in

theories of politics, especially in new institutionalist literature (see Blyth et al. 2014), what do we gain from engaging with theoretical dichotomies?

HI stands right in between these two views and gives us a thoroughly viable and comprehensive explanation: human beings are both norm-abiding rule followers (the cultural approach – norms & values) and self-interested rational actors (the rational choice approach). It very much depends on the individual actor in a given situational context, on how the actor behaves, which norms and rules to be identified as the possible causal mechanism(s) behind his/her actions, or what particular rational choice(s) the actor makes – there is no a priori knowledge on how to study politics or which of the two theoretical approaches should be applied (Steinmo 2008).

> "A historical institutionalist *does not believe* that humans are simple rule followers *or* that they are simply strategic actors who use rules to maximise interest. A historical institutionalist can even be rather agnostic to these issues. What the HI scholar wants to know is why a certain choice was made and/or why a certain outcome occurred. Most likely, any significant political outcome is best understood as a product of both rule following and interest maximizing" (Steinmo 2008: 126).

March and Olson (1989), directly draw attention to this duality in their seminal work about institutions and posit that,

> "political actors are driven by institutional duties and roles as well as, or instead of, by calculated self-interest; politics is organized around the construction and interpretation of meaning as well as, or instead of, the making of choices; routines, rules, and forms evolve through history-dependent processes that do not reliably and quickly reach unique equilibria; the institutions of politics are not simple echoes of social forces; and the polity is something different from, or more than, an arena for competition among rival interests" (March and Olsen 1989: 159).

Hence, the difference between Rational Choice Institutionalism, Sociological Institutionalism and HI is that HI takes a position *in between* both camps, embracing and incorporating assumptions of both theoretical frameworks into the theoretical body, however, emphasising the effects (both enabling *and* constraining) that institutions have on actors *over time* (Pollack 2008). To understand both theoretical camps better, this chapter will now turn to an assessment of central assertions of the calculus approach (rational choice approach) followed by analysis of the cultural variant (sociological approach) before drawing inferences for HI based on these findings.

1.2.1. The calculus approach – logic of consequence

The 'calculus approach' embraces the notion that institutions persist because they constitute a Nash equilibrium. Individual actors would be worse off if they deviated from an institutional choice; therefore, an inherent logic of adherence of actors to the previously agreed institutional rules is prevalent. Institutional choices are made to overcome collective action problems; they lend stability to institutions, decrease transaction costs and diminish uncertainty (Hall & Taylor 1996). Actors have their spheres of influence; the interaction of these spheres of influence and their overlap of preferences and capabilities is assumed eventually to create the policy outcome. Interests lie at the core and shape these preferences. It is necessary to highlight that a distinction has to be made between the preferences of Member States and their interests in order to provide theoretical clarity. It is furthermore crucial to elaborate on preference formation, as the calculus and cultural approach diverge in this matter.

In rational choice theory, interests are the fundamental values and are to be understood as the most basic objectives an actor can have (Woll 2008). Milner (1997) elaborates that these basic objectives change little and actors strive to maximise their fundamental interests. However, preferences are subject to change and derive from interests, they are "the specific policy choice that

actors believe will maximise either their income or chances of re-election on a particular issue […] [p]references are a variable; interests are not" (Milner 1997: 15). As a consequence of this assumption, actors might share the same interests in the first place but nevertheless have divergent preferences (that is between Member States), *and vice versa* (between a Member State and the Commission). Based on these preferences it is possible to accurately depict how agents act rationally (Dietrich & List: 2012) and why they make certain policy and institutional choices.

Furthermore, the calculus approach posits that preferences are *exogenously* given (Thelen & Steinmo 1992, Thelen 1999). Whatever process informs and creates preferences precedes the choice process and can be regarded as independent from it (March & Olsen 1989). This idea is a fundamental one in modern choice theory, in the "revealed preference" version of the theory (actors are not directly asked about policy choices but they are revealed when gauging choices), preferences must be stable to be testable. In other variants of choice theory, preferences can change, but the "choice itself does not produce a change in preferences" (ibid: 163). Due to this stability, current preferences are good predictors for future preferences, they are in addition unambiguous and consistent, and thus choices will be clearly indicated (ibid.).

To sum up the core assumptions: interests are fixed, actors never change their fundamental interests, at most they might change preferences over actions after learning new information about a likely outcome. In addition, they are exogenously given; a standard rational choice theory cannot explain how they are formed. Preferences are a crucial feature, however, they are an "essential but inexplicable feature of the agent's personal identity" (Dietrich & List 2012: 2).

Where can we locate institutions in a continuum of rational choices? The rational choice approach considers "institutions as exogenous constraints, or as an exogenously given game form" (Shepsle 2005: 24). An assumption that

denotes a unique feature of rational choice theory is its emphasis of 'equilibria' and 'equilibrium order' to gauge political phenomena (and institutions). Institutions are coordinating mechanisms, which maintain and sustain these equilibria (Thelen 1999). Rational choice institutionalism assumes that once actors chose an institution, they are in equilibrium. No actor within the institutional setting, and with a constitutional right to amend the institution, has an incentive to do so (Pollack 1996) due to the argument of rational choices made at an earlier stage. "Institutions are simply equilibrium ways of doing things. If a decisive player wants to play according to different rules (…) then the rules are not in equilibrium and the 'institution' is fragile" (Shepsle 2005: 26). These claims are made by strong versions of rational choice theory, "which begin with a (universal, not context specific) rationality assumption" (Thelen 1999: 375).

However, as Pollack (1996) emphasises, we see institutional choices to be consciously and successfully amended by actors, thus assuming that institutions must have fallen into *disequilibrium*. The question is why change in prevailing institutions happens. North's rationale (allowing for incremental change based on path dependent processes) and Scharpf's joint decision argument made earlier in this chapter already gave us some answers. The following section, however, will give us more indicators on how such phenomena can be explained.

1.2.2. The cultural approach – logic of appropriateness

The 'cultural approach', without neglecting that actors behave rationally and on a purposive basis, imputes humans to act according to their particular worldview. Actors are 'satisficers' as they opt for the solution that satisfies a certain threshold of needs, and not utility maximisers, who search for an optimal solution depending on a trade-off of all available information. They tend to make decisions depending on the interpretation of a given issue, and not

just merely upon an evaluation of a set of rational criteria and thoroughly instrumental calculations. Against this backdrop, institutions provide moral and cognitive templates, allowing for individual construction of possible action (Hall & Taylor 1996). The actors are deeply embedded in these institutions, which transport norms, values, symbols and scripts, and these ideational factors create filters for interpretation and define possible action. Actors gauge not only the situations but also assess *themselves* (their actions) within a given context. Institutions provide strategically useful information about possible choices *and* they shape the identities, self-images and preferences of actors (ibid.).

Traditional rational choice theory can explain preferences, but it tells us little about preference formation per se (Dietrich & List: 2012). As mentioned above, the cultural approach, on the other hand, offers valuable insights:

> "Most research on preferences (…) indicates that preferences and meanings develop in politics, as in the rest of life, through a combination of education, indoctrination, and experience. They are neither stable, nor precise, nor exogenous. If political preferences are moulded through political experiences, or by political institutions, it is awkward to have a theory that presumes that preferences are exogenous to the political process" (March & Olsen 1989: 163)

Let us have a look at this issue from the cultural approach first, which will subsequently guide us towards a rational choice explanation. The cultural approach claims that preferences are *endogenously* given. As diametrically opposed to the assertion of modern choice theory, it proposes that institutions are not mere means to channel policy and structure political conflict. Rather, institutions shape interests and objectives endogenously in addition to the aforementioned primary structural functions.

Hence, preferences are shaped by, and created within, institutions. Preference formation is informed by societal processes and, in contrast to rational choice

theory, is *endogenously* given. Bulmer (1998) analyses the development of the Single European Market (SEM) and ascribes explanatory value to ideas, values and norms embedded in institutional settings. Likewise, he theorises that ideational values are deeply embedded within institutions, which inform actors and the evolution of ideas, hence substantiating the ideational rationale of preference formation. Institutional structures are permeated by norms and codes of conduct, and it is difficult to demarcate formal institutional rules from their normative context.

Institutions operate as gatekeepers and structure access to political processes. They induce a kind of bias and, due to the institutions of intrinsically anchored norms, symbols and values, shape the behaviour of actors. In addition, institutions develop a certain endogenous momentum for policy change that goes beyond a mere mediating role between different actors, helping us to conceive why European institutions can serve as agenda-setters. Hence, institutions can distribute policy ideas, e.g. market integration was conceived as a central norm promoted by the Commission, which helped to create a new policy agenda in the case of the SEM (Bulmer 1998).

The behaviour that can be observed in political institutions reflects the routine way in which people do what they are supposed to do. Simple stimuli cause certain standardised behaviour amongst individuals who do not extensively assess the situations on grounds of rationality. Institutions have a set of norms that they convey, to be imposed either by direct coercion or authority, or they may be part of a code of 'appropriate behaviour', which is learned and distributed through processes of socialisation or education. In social science, it is a commonplace observation that action is often based on gauging the normatively appropriate behaviour rather than on calculating the expected returns (March & Olsen 1989). Political actors associate "specific actions with specific situations by rules of appropriateness" (ibid.: 23). A strong focus has to be placed on duties and obligations, rather than calculated decision-making. Against this backdrop, political and social institutions define, and transmit

through a process of socialisation, the appropriate behaviour for a person in a specific situation. Political institutions follow, and are organised by this "*logic of appropriateness"* (ibid.: 160).

How can change be explained through a cultural approach? As mentioned above, HI emphasises the importance of ideas in the process of preference formation in institutional arrangements. If an institution is successful in institutionalising a set of ideas, the institutional trajectory becomes difficult to change. Peters et al. (2005) point out that in order to do so, it needs leadership or external shocks. Change can happen if a certain policy choice becomes dysfunctional; a disjuncture between norms and performance must be perceived by different actors. Subsequent to the perceived failure, actors must have the opportunity to choose from new ideas, given that new ideas are *available* - they must be at hand in the first place. Ideas can be a significant source for punctuations in established equilibria, and it is crucial to understand that conflict over these ideas within institutions plays a significant role. Ideas do inform political conflict over an agenda, either regarding what issues are on a political agenda or what form the issues will take. In this sense, political conflict can be a motivator and a momentum for change (ibid.). Within this context, "[i]deas *do* matter a great deal in explaining institutional change" (ibid.: 1296).

Hall (1989), in his seminal work on Keynesian ideas, analyses how ideas informed institutional change in several countries. The striking and fascinating notion is that, although ideas might not be expected to be found in economic phenomena, they are substantial factors influencing policy choices, even in a highly 'technical' environment normally associated with material interests, monetary capacities and money flows. Ideas are commonly seen as a part of the superstructure rather than the base of political economy (in this respect the institutional frame), however, they are important constituting parts of institutions. "To neglect the role of ideas (…) is to miss an important component of the economic and political worlds" (Hall 1989: 361). It is ideas that inform

political leaders and institutions. Structural accounts of institutions give us tools to understand the constraints policy makers face, but “policy making is based on creation as well as constraint”, since new policies have to be developed (ibid.: 361). However, to ascertain ideas’ explanatory value and simply to cite them is not enough. It is paramount to also pay attention to the question of *why* certain ideas succeeded over others in order to bestow them explanatory value (ibid.). It is important to mention Hall’s work, as the world of energy policy resembles the world of economics, with rigid structures and actors that might be expected to be rationally based rather than ideationally guided.

> “The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood” (Keynes 1936: 383).

1.3. The Historical Institutional approach towards preferences

As already explained in the section on the core assumptions about HI, the difference between Rational Choice Institutionalism, Sociological Institutionalism and HI is that HI takes a position *in between* both camps, embracing and incorporating assumptions of both theoretical frameworks, however, emphasising the effects that institutions have on actors *over time* (Pollack 2008). In HI, scholars work within the boundaries of both traditions. This is the central and most important observation that must be made when comparing the three theoretical approaches and compartmentalising their similarities / differences. Long-standing rivalries, especially between the sociological and rational choice strand, make it necessary to untangle any ambiguities. Moreover, in contrast to Rational Choice Institutionalism, HI in general rejects pure ‘functionalist’ explanations to why institutions are created. Functionalist explanations tend to stress that institutions are created by contemporary actors in order to efficiently delegate specific functions to institutions, and pay little to no attention to historical legacies (ibid.). Thus,

rational choice explanations emphasise the continuation of equilibrium institutions that generate optimal outcomes at any point in time.

HI, on the other hand, proposes that institutional choices made in the past can persist at a later point in time and shape and restrain the possible options for actors. That said, HI Scholars like Pierson fully integrate assumptions about actors and their preferences that are in-line with rational choice theory. Pollack (2008), another proponent of the rational-choice strand of HI, considers HI not as a school of thought,

> "but rather as a particular variant of rational-choice theory emphasizing the importance of time, feedbacks, sequencing, and path-dependence in the study of politics" (Pollack 2008: 4).

Rational choice approaches within the HI literature emphasise the rule-based nature of institutions and that all actors are fully aware of the terms and conditions upon which the institution is based. On the other hand, as Hall (2010) emphasises, the sociological strand of HI stresses the assumption that institutions are inherently ambiguous and open to interpretation and re-interpretation rather than based on distinct rules. This shift in perception is not dependent on an active agreement between a coalition of actors. Rather, it can occur through a process of re-interpretation, which causes the meanings actors attribute to a specific institution to change over time, in conjunction with shifts in patterns of action (Hall 2010).

The central questions to be answered in an institutional analysis is how an institution affects the behaviour of individuals, and how actors behave within a predominant institutional setting. As broached in the section above, historical institutionalists can apply both the 'calculus approach' and / or the 'cultural approach' in their institutional analysis (Hall & Taylor 1996). The calculus approach contends that human behaviour is based on strategic calculations and preferences are given exogenously. The cultural approach, on the other hand, posits that behaviour is not fully strategic but contingent on an

individual's world view and that preferences are given endogenously (ibid.). Can we reconcile both strands by striving "for creative combinations" (Thelen 1999: 380), and if 'yes' is the response, to what degree? How do we know which rationale sets the stage for the behaviour of actors – self-interest or norm-based actions – and which principle is the predominant rationale in a situation? Steinmo (2008) gives a succinct answer to this question:

> "[t]he historical institutionalist would go to the historical record (also known as evidence) and try to find out" (ibid.: 126).

Actors are both rational actors and norm-abiding rule followers. Thus, behaviour is dependent on the individual, the context, and the rule (ibid.). This research project will therefore not foreclose the possibility of taking advantage of both theoretical strands. Rather, the empirical evidence will be analysed inductively with the help of a variant of HI that allows for both rational choice and sociological explanations. Building on the seminal work of Hall and Taylor (see Hall & Taylor 1996: 940), this project adopts an eclectic approach to the three institutionalisms, driving by the empirical content observed

Along these lines, and contingent upon the evidence, the analysis will therefore assess whether decisions to amend the legal framework of EU energy policy (both primary and secondary law) are based on rational calculations or ideational factors - or whether a combination of some sort is evident. Does this mean that the Historical Institutionalist must fully engage in an all-encompassing synthesis of the two strands? The simple answer is no. Rather, as Thelen (1999) suggests, "we might instead strive for creative combinations that recognize and attempt to harness the strengths of each approach" (ibid.: 380).

For instance, a preliminary analysis of secondary data, such as press releases affiliated with European affairs, suggests that on some occasions actors showed a reluctance to provide technical assistance to each other during crisis situations and strived to tackle the crises with disproportionate measures

creating the institution to be in disequilibrium (Roggenkamp et al. 2016). Crises here can be understood as exogenous factors disrupting the functioning of energy markets, namely cold spells during harsh winters. The omission of cooperation in turn led to market failure and, in the end, proved to be disadvantageous and very costly for the actors involved. From a rational choice standpoint, committed to the notion that institutions are in equilibrium and that actors always have the necessary information available to maintain the status-quo, such behaviour cannot be sufficiently explained. As actors are considered rational and self-interested utility-maximisers, they should have opted for cooperation to tackle the issue and to minimise the impact of the exogenous threat on the markets.

Consequently, proposals for improvement of the regulatory framework were made. Thus, it will be expedient to enhance the theoretical model and ask about how ideational factors contributed to the development of policy instruments capable of tackling special circumstances, such as energy crises / situations where the 'regulatory demand' of an institution is high (surpassing the regulatory means of markets under normal circumstances), and which push the capabilities of institutions to its limits. Simply put, the analysis of policy development and the way that institutions respond to crises might benefit from a carefully adjusted framework that combines materialist explanations with ideational factors. Steinmo (2008) understands ideas as "creative solutions to collective action problems" (ibid.: 131). New ideas can help actors to solve immanent problems. This implies that institutional change is about to happen when powerful actors have the ability and the political will to change the institution in favour of new ideas. A 'good idea' is understood as one where a group of actors come to a common understanding that there is a problem that needs to be solved and that the idea, the 'creative solution', actually addresses the problem. Thus, "[s]een in this way, ideas are not 'irrational,' but instead are best understood as creative adaptations that can be evaluated both on rational and emotive grounds" (ibid.: 131).

The strategy to endorse both theoretical camps is particularly fruitful as such an examination of the historical record will reveal which kind of preferences actors endorse and why an institution follows a certain trajectory. The rational-choice approach helps to account for stability and continuity in the institutional setting, facilitating incremental change; the notion of exogenous factors generating the possibility for critical junctures investigates how institutional change can be reasoned through factors that lie outside the institution. Ideational factors, on the other hand, will contribute to the analysis by revealing that certain decision-making processes and institutional change might be the product of changes in ideas about the institution and on what grounds it should be governed. Such considerations have important ramifications for our understanding about institutions and policy development.

Steinmo (2008) trenchantly comments on the divide in the literature:

> "[t]here has been an unfortunate and unnecessary tendency to pit 'ideational' analysis against 'rational' choice in a way that appears to argue that one bases decisions either on ideas or on rational calculations. This is an absurd distinction" (ibid.: 138).

In order to substantiate such considerations, Blyth (2016) cites Hall and Lamont and postulates that a thorough and comprehensive explanation of a decision should abstain from a choice between

> "ideas or interests in the study of politics; rather, the contemporary condition is marked by the interaction between neoliberal ideas about states and markets and the material endowments of actors and groups" (Hall & Lamont 2013 as cited in Blyth 2016: 159).

Chapter II: Research Design

This work is located in a positivist epistemology and the theoretical framework laid out above will be used to generate testable hypotheses. The following section will therefore present four hypotheses which aim at testing the effects of the independent variables on the dependent variable. The proposed *dependent variable* (DV) is *the measured variation of the process of integration* in European energy policy *over time*. It can be described as the outcome of the decision-making process; the agreements reached between the different actors and the legal provisions implemented to enrich the *acquis*. The proposed *independent variables* (IVs) are the interplay of both institutional stickiness and critical junctures and directly affect the DV. But how will integration be measured in the first place? To this end, this work develops a framework that distinguishes between three analytical units that are important in the institutional continuum: *intended goals* (the desired targets a policy should achieve), *policy output (the core output of the institution)*, and *policy outcome (the level of effectiveness of the policy output)*. The latter two units of analysis will help us to form a solid basis for the conceptualisation and operationalisation of the DV.

The following paragraphs will establish a model to conceptualise the DV and the IV and establish the four hypotheses to be tested in the empirical section. Firstly, the three analytical units will be discussed, of which intended goals and policy outcome form the basis for measurement of the process of integration, which is defined as variations of the DV. Secondly, we will look at a way how we could conceive feedback processes as these are dependent on, and closely related to, the aforementioned three units forming the basis for the measurement of the DV. This could also be done in the section on the methodological approach, however, as positive feedback processes are a central concept in the HI analysis, and play a prominent role in shaping the level of integration of institutional development, the decision was made to discuss these in this section of the thesis. Thirdly, the IVs will be defined and

operationalised; specific functions of institutions and institutional stickiness will be discussed; and critical junctures will be operationalised. Lastly, and based on the IV and DV, four hypotheses are proposed that will contribute to answering the research question.

2.1. The dependent variable – measuring integration

Intended goals are understood as the goals that the institution collectively tries to accomplish. These desired targets are agreed upon by all the actors governed by the institution and are conceived as the means to overcome specific energy-related issues / problems. Energy policy is comprised of different sub-fields. For instance, the contemporary proposal for the Energy Union addresses five distinct sub-fields, referred to in the official documentation as 'dimensions': Security solidarity and trust; a fully-integrated internal energy market; energy efficiency; climate policy; research, innovation and competitiveness. Each of these specific attributes of energy policy have their own goals and policy instruments at their disposal. However, the dimensions are also closely interrelated and mutually reinforcing. Historically, this segmentation / distinction between the dimensions has not been as pronounced as it is in the current proposal for the Energy Union and certain dimensions have gained prominence over the years, as the regulatory demand towards the institution increased. Nevertheless, each segment of energy policy has its own set of intended goals that the institution strives to accomplish. The predefined goals are addressed through, and should be attained with, specific legal provisions (the policy output) that the institution implements and adjusts when deemed necessary.

Policy output is associated with the legal provisions the EU published in the Official Journal of the European Union. These provisions are the rules and guidelines all the different actors must adhere to - or at least *should* adhere to - and are conceived as the very core of the institution. As we will see in the

empirical chapters, although the EU provides the legal framework for a wide range of aspects of energy policy, and which are constantly expanding, suboptimal outcomes, manifesting themselves in form of infringement procedures instigated by the European Court of Justice, or emerging as the consequence of the failure of markets, are not uncommon and lay bare the weaknesses of legal provisions. In summary, the *policy output* denotes the encompassing and overarching regulatory framework that strives to govern the behaviour of the actors with specific ends to be attained. *Thus, the policy output (the rules) is the core of the institution.* We now engage with the next analytical problem of how to measure *policy outcome*.

Policy outcome is understood as the actual *result* of how different actors transform the *policy output* into concrete action. The policy output, as laid out in the preceding paragraph, sets out the fundamental underlying rules that regulate, enable and restrain the course of their actions. Thus, an analysis of the *policy outcome* reveals the accomplishments, implications and shortcomings that the conversion of legal provisions into actors' activity entails. It is crucial to understand and assess the effectiveness and 'quality' of the policy output – the scope and the depth of the legal provisions - and how they play out in reality. The policy output does not necessarily translates into legal provisions that sufficiently provide sets of rules capable of creating the most optimal and desired outcomes for the institution. Rather, legal instruments are 'snapshots' of the present, conceived to address issues at a certain point in time, and future implications and pitfalls are not, or cannot be, sufficiently addressed due to a certain degree of historical contingency. Historical contingency is an important factor influencing institutions as, although in hindsight historical developments seem to be inevitable and logically connected, institution and actors have to face and respond to events that they could not anticipate in advance. From a HI standpoint, institutions and human beings are a subject of change as they adapt and are affected by history itself (Steinmo 2008). Exogenous factors and critical junctures could be events creating contingency. This means that exogenous events, either relatively

small or on a large scale, can impact a policy field in a way that was not anticipated when certain policy choices were made. Pierson (2000) elaborates further on the impact of small events creating contingent responses by the institution and states that, “relatively small events, if they occur at the right moment, can have large and enduring consequences” (ibid.: 263). Moreover, and most importantly, shortcomings in the regulatory framework might emerge due to the fact that a coalition of actors might not share the same preferences in the first place and, hence, policy proposals by the Commission might be watered down during the negotiation process. Thus, an assessment of the policy outcome is important to develop an understanding about the effectiveness of the institution regulating specific aspects of energy policy.

The analysis of the policy outcome, the ‘effectiveness’ of the policy output, in the empirical section will not digress into a critical or normative appraisal of what the EU should or could have done, but rather provide a solid benchmark on how successful the legal framework was in regulating energy policy at a certain point in time. As previously outlined, the effectiveness of the *policy output* determines how well the activity of actors is governed and whether positive pay-offs are evident for all parties involved; whether policies lead to desirable and tangible results that help to achieve predefined goals; whether policies are able to deal with exogenous factors and threats; and whether policies lend stability to the institutional trajectory and contribute to institutional equilibrium. Indeed, the analysis provides an account of whether the policy framework is *actually suited* to, and *effective* in, tackling imminent issues and attaining a set of proposed goals. *Effectiveness* is directly connected to the *policy outcome* (and has a strong correlation with it). As a consequence, the *policy outcome*, understood as variation in *effectiveness*, defines how well a certain dimension of energy policy is integrated. Put differently, in this PhD thesis, integration is understood as the degree to which a policy proves to be effective in attaining a set of predefined goals. An explanation of how to measure the *policy outcome* (the effectiveness) and the *level of integration* will be outlined later in this section. In summary, the *policy outcome* is the extent

to which primary and secondary legislation (the *policy output*) is capable of effectively governing different dimensions of energy policy.

As previously stated, whether the provisions (the *policy output*) are capable of effectively regulating the dimension of energy policy concerned, is dependent upon the *policy outcome* (the level of effectiveness of the policy output). To summarise the interplay of all three analytical units: the policy outcome is dependent on the effectiveness of the policy output, and the policy output in turn is dependent on the intended goals envisioned by the coalition of actors.

Now that we have defined these three analytical dimensions, how can we measure the level of integration in practice? To enhance the model still further, the *level of the process of integration is defined as the difference between policy outcomes addressing the same policy area in different points in time* – the difference measures the variation in the DV. To recall, the *policy outcome* is in turn dependent on the effectiveness of the *policy output (the core of the institution)*. *Intended goals* are the predefined goals set out in order to effectively regulate / improve a certain dimension of energy policy; the *policy outcome* is the implementation of legal provisions by various actors in a real-world situation. Thus, the level of integration is measured and defined as the *difference between different levels of policy outcome* (effectiveness of the *policy output*) at different points in time. The higher the difference of these policy outcomes, the more the area of energy policy concerned is effectively integrated. In turn, and to put it differently, the less disparity there is between policy outcomes, the less integration happened.

2.1.1. Measuring the DV / integration – an example

Let's say, for the sake of argument and to illustrate how the analysis will be conducted in the empirical section, that we want to measure the degree of integration of energy markets over time. Firstly, we would look at policies that

relate to the internal energy market, for instance, the so-called Three Energy Packages could be the point of reference. We would define the *intended goals* of the institution as the means to remove barriers for market participation (and market entry) for all actors and to create unhindered flows of energy and capital throughout the internal market. Moreover, another intended goal would be the creation of a level playing-field, without market-distorting practices in place that are executed by powerful actors. Intended goals are delimited in policy proposals and preambles of legal provisions and indicate the objectives that are envisioned by the institution.

Secondly, having defined the intended goals, the analysis can turn towards the policy output. To accurately analyse whether policy provisions effectively accomplished the intended goals, we would look at secondary legislation that was published in the Official Journal over time. The analysis of the legal provisions would entail a 'stocktaking' of the policy instruments at disposal addressing the concerned ends for each legislative package. Each of the three packages has explicit means to be deployed which the actors deemed appropriate to liberalise the markets at a certain point in time.

Thirdly, the analysis would turn to indicators that measure the degree of market liberalisation. For instance, the degree of competition is a good indicator for market liberalisation. A high number of suppliers and low market concentration indices are seen as indicators of competitive markets. Another indicator is the level of market coupling as this is an important driver for wholesale electricity price convergence (ACER 2014). Accompanied by this, the development of interconnections of different energy grids also serves as a good indicator for market liberalisation. In addition, as some of the legal provisions come with the obligation to report its impact back to the Commission, such accounts can serve as a very good basis for the said assessment. Moreover, and most importantly, all new proposals issued by the Commission point to the shortcomings of the preceding legislative means and, thus, are also invaluable indicators concerning the effectiveness of policies, introducing feedback

mechanisms. The aforementioned indicators would be used to measure the *policy outcome*, the results that happen when various actors and stakeholders translate provisions into concrete action.

Lastly, the level of integration could be rendered visible based on the difference between *policy outcomes* over time, the *policy outcome* is the effectiveness of published legislation (the Three Energy Packages); the measurement is based on the aforementioned indicators that directly correspond with the degree of successful market liberalisation. The closer the two analytical units are, and the higher identifiable variation takes place, the better energy markets are integrated over time.

Although the policy output already provides a good indication of whether certain issues attract policy makers' attention, it would be inaccurate to measure the difference between policy outputs over time, as the policy output does not tell us anything about how effective legal provisions are in governing actors' behaviour. Such considerations would fall short of an accurate assessment of whether a regulation indeed provides the necessary policy instruments for effective governance – a consideration that certainly is provided if we compare different policy outcomes. A legal provision addressing a certain area of energy policy does not necessarily translate into an *effective provision*. Also, the quantity of published legislation tells us little about whether the institutions are capable of effectively implementing the legislation and whether it successfully results in the predefined goals.

2.1.2. Explaining path dependence, positive feedback processes and increasing returns

As laid out in the theory chapter, a concept that is prominently featured in the HI literature is the notion of path dependence, involving positive feedback processes and increasing returns (Pierson 2004). This section will set out how these concepts will be operationalized based on the analytical dimensions of

intended goals, policy output and policy outcome. It is a logical step to explain the relationship of these three dimensions (intended goals, policy output and outcome) with the concept of feedback processes at this point.

Positive feedback processes are a well-suited analytical tool that helps to explain the phenomenon of stability in an institutional setting, and the reasons why institutions manage to remain on a rigid trajectory with an inherent resistance to change. Self-reinforcing or positive feedback processes can also be described as increasing returns processes (Arthur 1989, Pierson 2000, Pierson 2004). Path dependence is well captured by the notion of increasing returns, the phenomenon that the probability of further steps down a certain path increases with each step taken into the same direction (Pierson 2000). Collective action within an institution is prone to developing the qualities of positive feedback processes. Adaptive expectations are a reason for positive feedback mechanisms:

> "actors must constantly adjust their behaviour in the light of how they expect others to act. Whether you put energy into developing a new party, or join a potential coalition, or provide resources to an interest group may depend to a considerable degree on your confidence that a large number of other people will do the same" (ibid.: 258).

In addition, collective action always involves high start-up costs (material and cultural), and creates a good amount of learning and coordination effects.

This PhD thesis posits that the different dimensions of European energy policy and governance display all these features to various degrees. Indeed, high start-up costs for energy systems are an obvious example due to the cost-intensive nature of energy production, transmission and regulatory oversight. These costs generate high expectations of *both investors,* who want to see their investments generating sure profits (grounded in the fact that certain generating technologies amortise just after a considerable amount of time has passed), *and policy makers,* who want to create a regulatory framework providing a secure and sustainable supply of energy and an environment that

attracts investors and maintains fluid markets. However, it is not just economic factors that generates adaptive expectations and positive feedback processes.

Learning and coordination effects also create a momentum for positive feedback and path dependent processes. Learning effects arise within institutions as actors take advantage of the opportunity sets provided by the institutional framework. Once a certain path is established, the network externalities, the learning process of institutions, and "the historically derived subjective modelling of the issues reinforce the course" (North 1990:99). Based on the model by Arthur (1988), however, learning effects might be conditioned and constrained to a certain degree as the processes of learning in political institutions differ from learning effects applied in economics. Pierson (2000) clarifies that actors who engage in highly complex political environments are heavily biased in how they filter information. Information that tends to confirm and reinforce the prevailing institutional trajectory will be incorporated, whilst disconfirming information will get filtered out. Thus, social interpretations of complex political environments instigate feedback processes as they are frequently shared with other actors and, thus, create network effects and adaptive expectations. "The need to employ mental maps induces increasing returns" (Pierson 2000: 260). Based on these considerations, learning within institutions is guided by a rationale that is embedded within, and shaped by, the institutional design.

In this PhD thesis, the concepts of path dependence and positive feedback mechanisms are deployed as important analytical tools to explain the institutional trajectory at a certain point in time; once an increasing returns process is established, the institution will be in equilibrium and quite resistant to change. However, based on the assumptions of HI, under such conditions, incremental steps and alterations can nevertheless be expected to change the institutional path. But how will this research project deploy the concept of path dependence? In the preceding paragraphs we established a framework on how to conceptualise an institution (the policy output), how to measure the DV

– the measured variation of the process of integration - based on the difference of policy outcomes over time; and the role of intended goals, understood as the goals that the institution collectively tries to accomplish. Positive feedback processes are dependent on, and closely related to, these three units. The continuum of the *intended goals*, *policy output*, *policy outcome*, and the inherent monitoring processes associated with the policy outcome constitute the basis for an explanation of how increasing returns, and associated incremental institutional change, can be perceived.

Let's recall the 'cycle' of an equilibrium institution punctuated by formative moments followed by path dependent processes in order to deploy a basis for the conceptualisation of increasing returns. First of all, a critical juncture (or trigger event) punctuates the institution in equilibrium and instigates a institutional *disequilibrium*. Critical moments can be created by both internal and external forces (Collier & Collier 2002). Whilst a clear definition of how this project operationalises a critical juncture will be provided in the subsequent methodology section, it is worth mentioning here that not only 'big' events constitute a critical juncture (and can have big consequences), small events that occur at the right time, can also establish long-lasting legacies (Pierson 2000). However, as Capoccia & Kelemen (2007) note, some of the HI literature overemphasises that a set of *random*, small and sequenced events can instigate a process of increasing returns. They rightly point to a shortcoming of such general assertions: the neglect of power as a key dimension in politics.

> "Political science analyses of critical junctures (and synonyms) most often focus not on random small events but instead on decisions by influential actors—political leaders, policymakers, bureaucrats, judges—and examine how, during a phase of institutional fluidity, they steer outcomes toward a new equilibrium" (ibid.: 354).

This means that actors are not merely 'bystanders' during formative moments, but actively influencing the decisions that are made to defend or enhance their own interests (Thelen & Steinmo 1992).

If we go back to the original goal to further conceptualise feedback processes dependent on the three analytical units: intended goals, policy output, and policy outcome. Firstly, a critical juncture (formative moment) impacts on an institution. Thus, and as a consequence of the critical juncture, powerful actors make certain choices that put the institution on a specific trajectory. During the formative moments, the decisions that are made can have long-lasting consequences (Capoccia & Kelemen 2007, Pierson 2000, Pierson 2004, Thelen 1999, Peters et al. 2005). The institution is set on a specific path and increasing return processes start to unfold. The decisions that are made as a consequence of the formative moments are enshrined in the rules that are conceived to govern the institution – the *policy output*. Subsequently, actors translate the *policy output* into activity based on the institutional rules. Path dependent processes, as laid out in the previous paragraphs, entrench the institution and lend the institution stability, but make it also difficult and resistant to change. The ramifications of the policy output being transformed into action, as seen in the policy outcome, constitute the rationale for feedback processes. How can we explain this phenomenon?

The fundamental implications of the policy outcome display the features of, and are the driving factors for, increasing returns, such as high start-up costs (material and cultural; costs that actors want to generate positive Return On Investment), learning and coordination effects (like monitoring and evaluation of policies), and adaptive expectations. All these factors contribute to feedback loops that affect the institution. Actors like the Commission, but also agencies and associations like ACER (Agency for the Cooperation of Energy Regulators), ENTSO-E (European Network of Transmission System Operators for Electricity), ENTSO-G (European Network of Transmission System Operators for Gas), and stakeholder consultations, assess the effectiveness of the policy output based on the policy outcome. This means that the institutional rules, and the behaviour of actors, are constantly re-evaluated and monitored due to actors within the institutions, who assess the

viability and usefulness of specific policies and ensure that institutional rules are followed.

However, these actors are also shaped by, and constrained through, the institutional layout and can only operate within their assigned parameters. HI proposes that institutional choices made in the past can persist at a later point in time and shape and restrain the possible policy options for actors (Pollack 2008). Moreover, they are heavily influenced by learning effects and adaptive expectations, as they have a high interest in reinforcing the institutional trajectory (Pierson 2000). Based on this assessment, information about the policy outcome is reported back to the institution – the feedback process is complete. The feedback in turn triggers an adjustment of the definition of the *intended goals* and the specific policy means that are deemed appropriate to tackle specific issues. Subsequently, the new intended goals generate a new policy output (an amended set of rules – the specific policy choices). Consequently, the feedback cycle starts all over again. However, this time the institution does not face a critical moment, the 'fuel' for the institutional trajectory is provided by path dependence and feedback. These 'new' feedback processes, however, which ultimately manifest themselves in an adaption of the institutional framework, are only capable of instigating incremental steps and small changes of the institutional rules. Due to institutional constraints and path dependency, major alterations are not possible. The institution faces an equilibrium; path dependency provides the 'glue' to hold the institution together and the cost of exit increases for the different actors the longer they remain within the institutional framework.

2.2. The independent variables: their effects on the dependent variable

As we have defined the analytical units of integration and feedback processes, we will now turn to a discussion of the relationship between the independent

and the dependent variables. The *independent variables (IV)* are deduced from the theoretical approach outlined in the beginning of chapter I. Two independent variables are defined, as they can be perceived as central units of analysis in HI: institutional inertia (lock ins & path dependence) and critical junctures. The IVs are informed by a continuum of *both* different levels of stickiness and whether a critical juncture happens or not. The two modes to operationalize stickiness are labelled as *low* and *high* institutional stickiness. Low institutional stickiness is reasoned through North's increasing returns rationale (North 1990), as discussed in the section on feedback processes and increasing returns. Increasing returns, characterised by path dependence processes, nevertheless allow for the possibility of incremental change, including learning effects, and coordination effects, driven by adaptive expectations. High institutional stickiness is operationalised on the basis of Scharpf's joint decision trap (Scharpf 1988). Intergovernmentalism in combination with the unanimous voting rule creates substantial 'lock ins'. Once these factors are suspended, and QMV is in place, change is possible. These two modes of institutional arrangements are then either punctuated by critical junctures, or they are not. However, after a critical juncture has occurred and the formative moments are over institutional inertia settles in again and constrains the possible choices visible during formative moments. The measurement of the degree to which an institution is sticky or not will be operationalised with the help of a proxy variable, as explained in detail below.

2.2.1. Institutions and their specific functions

In order to operationalise the 'stickiness' of institutions, this section will recall how the HI literature conceptualises institutions and discuss which functions they fulfil. Institutions are understood as actors and structures in which agency is embedded (Saurugger 2014). HI asks how institutions affect the behaviour of individuals (Hall & Taylor 1996). From a rational choice standpoint, institutions provide coordination functions, whereas without neglecting the

regulatory capabilities of institutions, HI focuses on how historical legacies and temporal processes produce, and are responsible for, specific outcomes (Thelen 1999). “In general, historical institutionalists associate institutions with organizations and the rules or conventions promulgated by formal organization” (Hall & Taylor 1996: 7). As discussed in the theory chapter, when it comes to the formation of actors’ preferences, HI accounts for both rationality (the calculus approach) and ideational values (the cultural approach). Institutions are based on rules that govern the actions of various actors, and thus, the *policy output* (the rules) is the core of an institution.

From a calculus standpoint, institutions provide the necessary means to create certainty for actors about the present and future behaviour of other actors. Institutions generate stability, confidence in contractual agreements between actors, as they provide enforcement mechanisms and penalties for defection. The cultural approach, on the other hand, stresses that actors’ preferences and behaviour is not necessarily strategic (without neglecting the possibility for strategic action), but rather contingent on the actors’ worldview. From this perspective, institutions provide moral and cognitive templates for interpretation and action. The cultural approach suggests that institutions provide not only useful information for strategic action, as laid out in the calculus approach, but also shape and affect the self-image, identities and preferences of actors (Hall & Taylor 1996). The HI literature postulates that institutions do more than channel policy and structure political conflict, but rather the institutional context also defines and shapes objectives and both dimensions are inseparable (Thelen 1999).

Building on these assumptions, this PhD thesis endorses the notion that institutions are not only capable of efficiently regulating and governing political processes, but in turn are also central to shaping and influencing the preferences of actors. Institutions can constrain and shape the political strategies of actors, but are also the outcome (conscious or unintended) of political strategies, political conflict and the choice of different actors.

Institutions include both formal organisations and informal rules that shape actors' conduct (Peters et al. 2005). They are conceived to organise the polity and play a central role in governing how power and authority are exercised, constituted, controlled and legitimated. Institutions are central factors in constraining and enabling the range of possible action; they define the regulatory capacity of a political system. "Institutions simplify political life by ensuring that some things are taken as given" (March and Olsen 2008: 4).

Institutions are hence an essential component of the political sphere as they help to define goals among actors and provide the necessary rules capable of integrating a specific policy area – the policy output. They play a remarkably important role in structuring, organising and governing political processes and, at the same time, enable *and* constrain the actors that are embedded within the institutional framework. Institutions are the 'glue' that ties a coalition of actors together, and they are the very fabric the political realm is composed of. Rules for governance can be formal or informal, however, they are the central point of reference and constitute the very core of the institution. Therefore, if we refer back to our three analytical units for the measurement of integration, institutional rules form the very basis of institutions and are closely associated with the *policy output*.

2.2.2. Institutional stickiness & critical junctures

Institutional stickiness is defined as one of the two independent variables influencing the dependent variable. The second IV is whether a critical juncture happens or not. 'Stickiness' means that the institutional setting is quite rigid and resistant to change. Even if specific decisions might be beneficial for a range of actors, institutional constraints diminish the range of possible alterations to the framework and hinder a substantial deviance from an existing path. To put it differently, stickiness is synonymous with resistance to change over time. The question is how and why are institutions sticky? This project

proposes that institutions can be sticky for two reasons. Firstly, they tend to be sticky due to the various factors that were discussed in this section explaining positive feedback processes: feedback is based on increasing returns, learning and coordination effects (for instance, the monitoring of policies translated into action), and adaptive expectations by all the involved actors. Secondly, institutions can become subject to a particular strong version of stickiness (or institutional inertia), which is caused by an institutional design that endorses veto players and which pre-empts any efforts by actors to change the institutional trajectory. This mode of high institutional stickiness is referred to as 'lock-in'. But how do we recognise whether one or the other influences decisions made in an institution? The concept of institutional stickiness cannot be directly measured as we defined an institution as a set of rules, which is associated with the policy output. However, whether the policy output (or a policy) is 'sticky' or not, and moreover, to what degree stickiness occurs, cannot be directly analysed. Therefore, stickiness will be operationalised with the help of a proxy variable.

The proxy variable utilised to measure stickiness is the voting rule endorsed in the institution: unanimous voting or qualified majority voting. The proxy variable can be understood to have two values. Firstly, based on Scharpf's joint decision trap model (1988), if unanimous voting is the rule, the policy area will be almost impossible to change. This value is referred to as 'high institutional stickiness'. Due to the requirement of a unanimous vote to instigate change, the institution remains on its path and is locked-in on a specific institutional trajectory. The second value of the proxy variable is termed 'low institutional stickiness'. It can be observed when unanimous voting is suspended and Qualified Majority Voting (QMV) is the main voting rule – or when QMV is the voting rule from the beginning. In this case, the institution is capable of altering its regulatory framework to a certain degree. However, due to increasing returns and path dependent processes, merely incremental change is possible.

To provide a summary of the IV ‘institutional stickiness’:

High Institutional Stickiness = Unanimity Voting (no change of the regulatory framework / Scharpf’s joint decision trap applies)

Low Institutional Stickiness = when Qualified Majority Voting applies (change is possible to a certain degree due to increasing returns; however, merely *incremental* change)

Thus, the level of (possible) integration during the phase of institutional equilibrium (the phase where secondary legislation is made = the provisions that define day to day energy policy) is determined by both the stickiness of the institution and the degree of integration of primary law.

The second IV is whether a critical juncture happens or not. But what exactly is a critical juncture? As mentioned in the previous chapter, Capoccia and Kelemen (2007) suggest that the duration of the critical juncture must be brief relative to the path dependent process that it incites, and that during this critical moment the probability that the agent’s choice will affect the subsequent outcome is significantly higher than before and after the juncture. Agents face a much broader range of possible choices compared to the time during the path dependent institutional trajectory, and the impact these choices have on subsequent outcomes is therefore significantly heightened. Capoccia (2015) identifies the following explanatory approach:

> ‘an event or a series of events, typically exogenous to the institution of interest, lead to a phase of political uncertainty in which different options for radical institutional change are viable; antecedent conditions define the range of institutional alternatives available to decision makers but do not determine the alternative chosen; one of these options is selected; and its selection generates a long-lasting institutional legacy (ibid.: 151).

However, as Capoccia further clarifies, the trigger events for critical junctures do not necessarily need to be based on exogenous events but might also originate in endogenously generated driving factors. For example, power holders might disrupt institutional equilibria to achieve political objectives (ibid.). The notion that formative moments can rely on both exogenous *and* endogenous events is especially relevant for the HI analysis. It leaves room for an explanation that institutional change can be either initiated by exogenous factors (as a rational choice approach would suggest), or endogenously, without foreclosing that ideas and ideational factors might also trigger institutional change. In the words of Steinmo (2008),

> "[b]ringing ideas into our understanding of institutional change, then, brings agents back into institutional analysis. One could argue that a key weakness of institutionalism in the past has been that actors could be simple hostages of the institutions that they inhabit. Integrating ideas into the analysis addresses this problem by making institutions both a constraining/incentivizing force and the object of political contestation" (ibid.: 133).

Thus, the assertion that an analysis of institutional change based on a HI framework entails embracing both notions, is fully corroborated by Capoccia's considerations about formative moments. Further explanation of how to approach critical junctures from a methodological perspective will be provided in the section on methods.

2.3. Hypotheses

The relationship between the two IVs leads to variation in the DV. The DV can be understood to have three values based on the degree of integration: *low integration, moderate integration,* and *high integration*. A clear description of the scale of integration will be provided in due course. We have already

discussed how to operationalise integration in the ‘measuring integration’ section. Intended goals and the policy outcome together define the level of integration. To recall: *the level of the process of integration is defined as the difference between policy outcomes over time*.

2.3.1. Impact of the two IVs on the DV & measuring integration

Low integration

Impact of the IVs: *Low integration* takes place when high institutional stickiness coincides with no critical junctures. The high institutional stickiness (the institutional ‘lock-in’) will create high countervailing pressures to change, and prevents the institution from changing at all in the absence of a catalytic event like a critical juncture. In this case, Scharpf’s joint decision trap fully applies (measured through the proxy variable) as the cause for the institutional lock in.

Logic: As discussed in the previous section, integration is measured as the difference between policy outcomes. Based on this rationale, *low integration* is expected when goals are defined, however, they cannot be attained as the conceived policy outputs are not sufficiently capable of tackling specific issues and do not translate into effective legislation. Actors might show some willingness to address specific issues, but the institution simply does not provide the necessary framework to attain the goals. When comparing different policy outcomes, the difference between them shows no significant increase in effectiveness.

Moderate Integration

Impact of the IVs: *Moderate integration* of primary law will happen when high institutional stickiness encounters a critical juncture. The high institutional inertia prevents the critical juncture from unfolding its full possible potential, which it would do if institutional stickiness would be lower, culminating in a moderate outcome. A second case of moderate integration takes place when

low institutional stickiness falls together with no critical juncture. North's increasing returns model then fully applies; path dependent processes are revealed, allowing for incremental change.

Logic: *Moderate integration* can be expected to occur when goals are clearly defined and, due to provision in primary law, the institution has the capacity to attain these goals to some degree. The difference between two policy outcomes over time might still be rather moderate, pointing towards shortcomings in the effectiveness of the policy output. However, when comparing different policy outcomes, the difference between them shows an increase of the effectiveness of the policy output over time - incremental policy change is possible, the 'effectiveness curve' of the policy output is much steeper than during time of low integration.

High Integration

Impact of the IVs: *High integration* of primary law will take place when low stickiness occurs together with a critical juncture. This can be explained through the rationale that when institutions are not locked in, they are open to incremental change, and critical junctures can have a very high impact on an institutional choice. Primary law will be amended (through non-incremental change). However, after the critical juncture, the institution will fall back into equilibrium and a process of moderate integration will be instigated based on path dependency. Low integration will be a value as long as certain parts of the decision-making process are still subject to unanimous voting (for instance, measure of fiscal nature in Article 194(3) TFEU concerning energy policy).

Logic: *High integration* can be expected when specific goals are defined and the institution provides the necessary means to attain these goals to a high degree. Although certain actors (for instance Member States) might not share *all* their preferences with other actors, the institutional trajectory and institutional capacity that is provided, creates a fertile ground for policy-making that bears a large amount of effectiveness. Of course, negotiations to reach a specific agreement might still be cumbersome and hard to accomplish. The institution is capable of generating policy outputs that are able to effectively

regulate the behaviour of actors and attain collective goals (the policy outcomes).

Based on these characteristics, whenever a critical juncture occurs, non-incremental change of primary legislation can be expected. The change is non-incremental, as the critical juncture compels rapid change in the institutional setting. In the absence of such forces, incremental change of secondary legislation can be expected. It is thus incremental, as the absence of a critical juncture makes it possible for the institution to change gradually, and no short bursts of 'catalytic' events (critical junctures) compel institutional amendments. In a nutshell, after a critical juncture punctures the institution, the institutional trajectory is altered and a higher level of integration can be expected.

However, and as elucidated in the next section, endogenous or exogenous events can have an effect on the institution as well. These do not initiate far reaching changes in the institutional design and primary law but nevertheless have the capability to influence secondary legislation. They are not quite as strong as the ones that alter the institutional trajectory as a whole, but still powerful enough to alter important parts of the institution, namely secondary law.

2.3.2. The Four Hypotheses

Institutional stickiness, the first IV, is associated with the policy output (the rules) and measured with help of the proxy variable of the voting system. A critical juncture, the second IV, is understood as an event (exogenous or endogenous) punctuating the institutional equilibrium. Finally, the level of the process of integration, the DV, is measured as the difference between policy outcomes (how the rules are eventually transformed into concrete action) addressing the same policy area at different points in time.

Table 1. Hypotheses

Independent Variables (IV)	**IV: High Institutional Stickiness:** *Scharpf's Joint Decision Trap*	**IV: Low Institutional Stickiness:** *North's increasing returns rationale*
IV: Critical Juncture	**H2: Moderate Integration** Non-incremental change of Primary Legislation	**H4: High Integration** Non-incremental change of Primary Legislation; followed by process of moderate integration of secondary law
IV: No Critical Juncture	**H1:** Process of **Low Integration**; Minor change of Secondary Legislation	**H3:** Process of **Moderate Integration** Incremental change of Secondary Legislation; however, 'small' exogenous and endogenous factors affecting secondary legislation possible

The *Independent variable* (IV) depends on *both* the degree of institutional stickiness (low – high) *and* whether a critical juncture happened or not.

The *Dependent variable* (DV) is *the measured variation of integration* as explained in the section ‘measuring integration’. The DV is understood as the decisions that are reached and has three values: low integration, moderate integration, and high integration.

Hypotheses:

The hypotheses are *falsifiable*, therefore substantiating the positivist position.

H1: If no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. ‘Small’ critical events will have no effect on the institution.

H2: If a critical juncture occurs within a setting of high institutional stickiness, moderate integration can be expected. Integration will occur in the form of a non-incremental change of primary legislation.

H3: If no critical juncture occurs in a setting of low institutional stickiness, moderate integration can be expected. Integration will occur in the form of incremental change of secondary legislation. However, small endogenous and exogenous events can have an impact on the institution in equilibrium, providing the possibility to alter the trajectory of a specific part of secondary law.

H4: If a situation of critical juncture occurs within a setting of low institutional stickiness, high integration can be expected. Integration will occur in the form of a non-incremental change of primary legislation. After the critical juncture occurred, the institution falls back into equilibrium and a process of moderate integration of secondary law can be expected.

2.4. Data and methodology

The study utilises a mixed methods approach which will be discussed in detail in the next section. The case selection, which is informed by the generated

hypotheses, will be explained subsequently leading to elaborations on the methodology applied.

Table 2. Hypotheses with case selection

Independent Variables (IV)	**IV: High Institutional Stickiness:** *Scharpf's Joint Decision Trap*	**IV: Low Institutional Stickiness:** *North's increasing returns rationale*
IV: Critical Juncture	**H2: Moderate** Integration **SEA Treaty** Non-incremental change of Primary Legislation	**H4: High** Integration **Lisbon Treaty and beyond** Non-incremental change of Primary Legislation
IV: No Critical Juncture	**H1: Low** Integration **1950s - 80s**	**H3: Moderate** Integration **Three Energy Packages** Incremental change of Secondary Legislation

This thesis analyses the policy evolution from the early 1950s – the creation of the European Coal and Steel Community (ECSC) - to 2017, which includes the first proposals made by the Commission for a common energy policy up to the implementation of the most recent legislation. This timeframe will enable a comprehensive and holistic analysis of the policy area from its inception to the most recent significant developments, namely the implementation of the European Energy Union. The case studies used to test the hypotheses were chosen based upon a preliminary reading of policy developments, and an extensive examination of secondary literature addressing the various dimensions of energy policy. These insights provided an initial understanding of the policy field and concomitant developments within the sector. Moreover, the case selection was informed by the theoretical framework and its assumptions about locked-in institutions, critical junctures and notions of institutional equilibrium.

The delimitation from the 1950s to the 80s will inform the case for the first hypothesis. Energy issues were on the table of European leaders during this period, for instance, the proposals to enhance European integration on the basis of an integrated energy and transport policy were agreed on at the Messina conference (Lucas 1977) and, such as in 1973, when the oil crisis highlighted the European Community's vulnerability to interruptions of a secure and reasonably priced supply of energy (George 1996). The implementation of the SEA, one of the chief objectives of which was subsequently to create a Single European Market (SEM), will serve as the case for hypothesis number two. The creation of the SEM subsequently led to the first proposals by the Commission to integrate the energy domain per se. Focusing on post SEA is most suitable for narrowing down the case for the third hypothesis as the first legal measures were then laid out to regulate gas and electricity grids: the three energy packages. The Lisbon Treaty was chosen as the case for the fourth hypothesis as it made the proposal for the European Energy Union possible. The endpoint of the study was chosen as the Commission announced that 2016 will be "the year of delivery" of the Energy Union, which denotes the highest degree of integration to this point (Commission 2015).

Actors:

Three types of actors need to be considered: intergovernmental European Institutions (the Council of the EU, the European Council), supranational European Institutions (the Commission, the European Parliament), actors operating in both domains (e.g. Coreper and working groups), and public and private interest groups. Variables interacting and influencing each other during the policy making process are arranged in a multi-level model, distinguishing between materialist variables (e.g. different actors, structure and agency, exogenous factors) and ideational variables (ideational factors, norms, best practice, soft rational choice theory). A central concern to be addressed is the degree to which we can ascribe agency to the different institutions, how we

theorise about institutions in general and where the agency to alter them comes from - when conceived as an endogenous process. In this vein, the thesis will contribute to the structure / agency debate and additionally inquire about the level of coherence within the different institutions. It is paramount to elaborate on the sources of agency in more detail.

As discussed in the theory section, institutions are more than a set of formal (or informal) rules and more than the buildings in which the institutions are headquartered. We therefore theorise that institutions develop their own form of agency as they might alter policy development and the institutional trajectory in resonance with their own set of preferences. However, we have to emphasise that these institutions themselves are comprised of different actors with their own preferences, who are committed to individual perceptions of goal attainment. The Council of Ministers is a different institutional player than the Commission as different actors are involved in the institution. These actors display heterogenous interests as they derive their legitimacy / agency from diverse sources. Moreover, as the analysis will show, divergent preferences exist within the different institutional actors. For instance, the Commission is not a homogenous institutional player, with a coherent set of preferences, but rather an institutional actor that is constituted by different DGs with diverging preferences. As we will see in the empirical chapters, the Commission was not always internally aligned. For instance, the preferences of DG Competition and DG Energy diverged in some instances.

The actors within this spectrum have their range and scope of influence and serve as indicators for different preferences. Particular emphasis is placed on the Commission, the Council, and the European Parliament as the main decision-making bodies of the EU. They play an important role during the decision-making process and the legislative procedures. Public and private sector interest groups will also be incorporated in the analysis. Each of these actors are bestowed a particular leverage within the policy making process, depending on the institutional preconditions at a given time (such as voting /

veto power of Member States; unanimous vs. qualified majority voting) and norms and best practice.

These actors, however, are systematically connected to each other and should not be looked at separately as a lopsided focus on one unit would impose an imperfect condition for a comprehensive analysis: the unfavourable condition of overemphasis (or underestimation) of its influence on policy making. These distinct units exert power within their scope and create a radius of influence, which is defined by legal requirements and their available capabilities, resources, interests and ideas. They propose, reinforce and bring policies into existence. However, as a consequence of their inherent connectedness, they also intervene, react to and constrain each other.

2.4.1. Methods

I utilise different types of data that will be analysed using qualitative methods supported by descriptive quantitative data. An extensive document analysis of a qualitative nature is performed. Primary and secondary law published in the Official Journal of the European Union serves as the backbone of the analysis, as it defines the published formal institutional rules and represents the policy output as part of the policy cycle (together with intended goals and policy outcome). Official documents and dossiers from selected Member States were chosen for the analysis.

Member States were selected upon preliminary research conducted with the help of primary and secondary literature, which gave an indication of their respective preferences regarding new developments in energy policy, and the extent to which their preferences were heterogeneous or not. At the beginning of the historical analysis, as only 6 Member States were part of the European project, preferences could be largely identified in official documentation and secondary literature; stances towards certain sectors of energy policy were

quite stable over time and not as diverse as later in the timeline, when energy policy became broader in scope and more intertwined with other sectors. For instance, during the inception of the ECSC and later Euratom, France was very concerned with state security and bolstering its own economic standing in Europe to make the French economy more competitive in the future; preferences did not change much in the first few years. However, a limitation of relying on official documentation from this time is the fact that preferences *within* Member States could not be easily revealed. The historical record is rather thin in this respect and comprehensive secondary literature addressing considerations of the homo/heterogeneity of preferences is rather scarce. Accounts are not as manifold and detailed as they are in more contemporary contributions. Hence, in some instances, succinct accounts addressing preferences of/within different actors in the early stages of energy policy-making were not always easy to come by. However, (annual) reports and the Bulletin from the European Community for Coal and Steel / of the European Communities, published by the High Authority of the European Community for Coal and Steel / the European Commission, helped to build an understanding and overview of actor preferences.

Later in the historical analysis, when more Member States were part of the European Communities / European Union, preferences are clustered into groups: for instance, a cluster of Member States in-favour/against a decision (or with a different opinion) is created to discuss the most powerful/dominant players in more detail. These actors are treated as spearheads for policy development and specific preferences.

Official documentation from the institutions serve as primary sources in order to gain insight and explain major decisions, including: Conclusions of the Council, communications and proposals by the Commission, information about energy policy published by the High Authority and the Commission (for instance, the Bulletin from the European Community for Coal and Steel; the Bulletin of the European Communities), publications by the European

Community Information Service and DG Energy (for instance, reports on specific energy developments; press releases published by the Commission / DG Energy and comprehensive information on their website addressing the development of energy policy), information and documents from the European Parliament's website, and other relevant publications by European institutions. These documents were chosen to create a coherent narrative of historical events that serves as the empirical data which will subsequently be analysed from an HI perspective.

Given the sheer volume of publications and information found, conscious and informed decisions had to be made to reduce the quantity of documents to be analysed. This was achieved through a preliminary study of each of the timeframes under consideration (for instance, energy policy from the early 1960s to the early 1970s; the timespan before /after the first oil crisis; etc.), which gave an indication of the most significant events occurring during a specific period. Historical accounts and comprehensive volumes on the evolution of energy policy helped to acquire supplementary data[2]. Subsequently, these findings were taken to contextualise further information acquired from online archives, websites and secondary literature, in order to add empirical depth and richness to the analysis. A particularly challenging task was filtering out the most important legal provisions / documents / information about specific events that influenced the institutional trajectory. Here, hallmark decisions were mentioned (and re-iterated over months) in publications like the Bulletin from the European Community for Coal and Steel / of the European Communities. Comprehensive volumes by scholars or other secondary literature also pointed towards those legal documents that were valuable for deeper examination. This method made it possible to sift out the most important legal documents. However, a limitation of this approach is owed to the fact that a historical analysis may never be complete and, whilst

[2] see: Lucas (1977), Matlary (1997), George (1996), Schubert et al. (2016)

informed by the literature, subjective decisions on what to include must be made by the scholar.

In a nutshell, the analysis was conducted through the sequence of historical events, moving from one point to the next. The criteria for the document selection was as follows: first, communications and proposals of the European Commission, European Council conclusions (and recommendations), White and Green Papers, and the Bulletin from the European Community for Coal and Steel / of the European Communities were taken as starting points to identify a certain set of *intended goals*, defined within the institutional context. The decision-making process was then analysed through an assessment of the preferences of the different actors leading to a specific *policy output*. Subsequently, the *policy output* (the legal provisions) was assessed, and whether it was effective or not (the *policy outcome*). The policy outcome in turn was mentioned in new policy proposals created by the Commission – as shortcomings became apparent once secondary previsions were transposed into domestic law - and were taken as starting points for a new set of intended goals.

A conscious decision was made to pay less attention to new legislation regarding the coal sector in the analysis of the early stages of energy policy, as it was a fully integrated sector, which lost its dominance considerably after the inception of the ECSC. Indeed, early reports from the Commission highlighted the decline of the relevance / value of coal. Therefore, greater attention was paid to proposals addressing a common energy policy, provisions addressing oil and gas, and energy security, as these were areas that posed challenges in terms of deeper integration.

The Pittsburgh Archive of European Integration (AEI) was consulted for older documents that could not be found on the Commission's website (proposals, recommendations, decisions, general information, etc.); with a total of more than 77000 documents, it is a highly comprehensive archive of primary

sources. A structured search routine, guided by specific keywords/search words, resulted in the acquisition of relevant documents and publications. Moreover, Agence Europe was used to gain an understanding of relevant events affecting the energy sector and decision-making, which was likewise guided by a rigid search routine. Policy developments were cross-referenced in these documents, which helped to connect different developments, providing a more nuanced and comprehensive picture. As discussed in the section on Member States' preferences, in some instances, it was difficult to conduct the historical analysis, as structured narratives/evidence regarding early energy policy(-making) was scarce and not easy to obtain. In these cases, some documents, although referenced in primary sources, were simply no longer available, not even in the Archive of European Integration. Moreover, it should be noted that not all documents could be analysed, as the historical record is simply exhaustive and not every piece of information could feasibly be examined.

The data acquired from documents was supplemented by extensive data from a combination of exploratory and indicative interviews with experts and decision-makers in Brussels. The rationale behind incorporating interviews was to get a deeper understanding of preferences of institutions and Members States and identify potential areas of relevance - data that was not always readily identifiable from documents, as discussed earlier. Fifteen semi-structured interviews were conducted in April 2018, with representatives of the Directorate General Energy (DG ENER – internal market, security, interinstitutional relations) at the European Commission, representatives of the Committee of Permanent Representatives (Germany, Poland, Austria, Latvia), Members of the European Parliament, and think tanks. Questions were formulated based on the expertise and experience of the respective interviewee, in order to gain specific insight into particular policy events and perspectives, as well as more general open ended questions regarding policy development.

In the case of Permanent Representatives, the content addressed the preferences of the respective Member States, where preceding research gave an indication about their individual stance, and which was used to confirm / reject such assumptions. Hence, representatives of Member States were chosen based on preferences, which were identified through preceding research, and which represent different positions in the Council. However, a couple of Member States, which were contacted did not respond to the interview requests and were therefore excluded from an interview-based assessment regarding their preferences. In these cases, preferences had to be determined through a document analysis.

Interviews with Commission representatives were both indicative and exploratory. The interviewees were selected based on their positions within the institution and their respective area of expertise. This process proved highly successful as a number of the interviewees held senior positions within the Commission and the quality of data gathered was very high. These interviews with senior and experienced civil servants, proved invaluable in obtaining more detailed information about specific secondary legislation, since some of the interviewees were personally involved in drafting the content (proposals / final texts) of some of the legislation.

Data gathered from the interviews was used as primary data for the analysis and directly quoted, whereas other parts provided indicative background information. In this regard, the interview content sometimes changed during the course of the interview as interviewees started to elaborate on themes that were not part of the semi-structured questions, but which were highly interesting for further document analysis. For instance, interviews with Commission officials revealed the importance of institutional actors like ACER and ENTSO-E/G and the development of network codes, which proved to be very important for path dependent processes due to their ability to generate formal and technical rules, and their obligation to monitor processes. This provided invaluable content and insight which I would not necessarily have

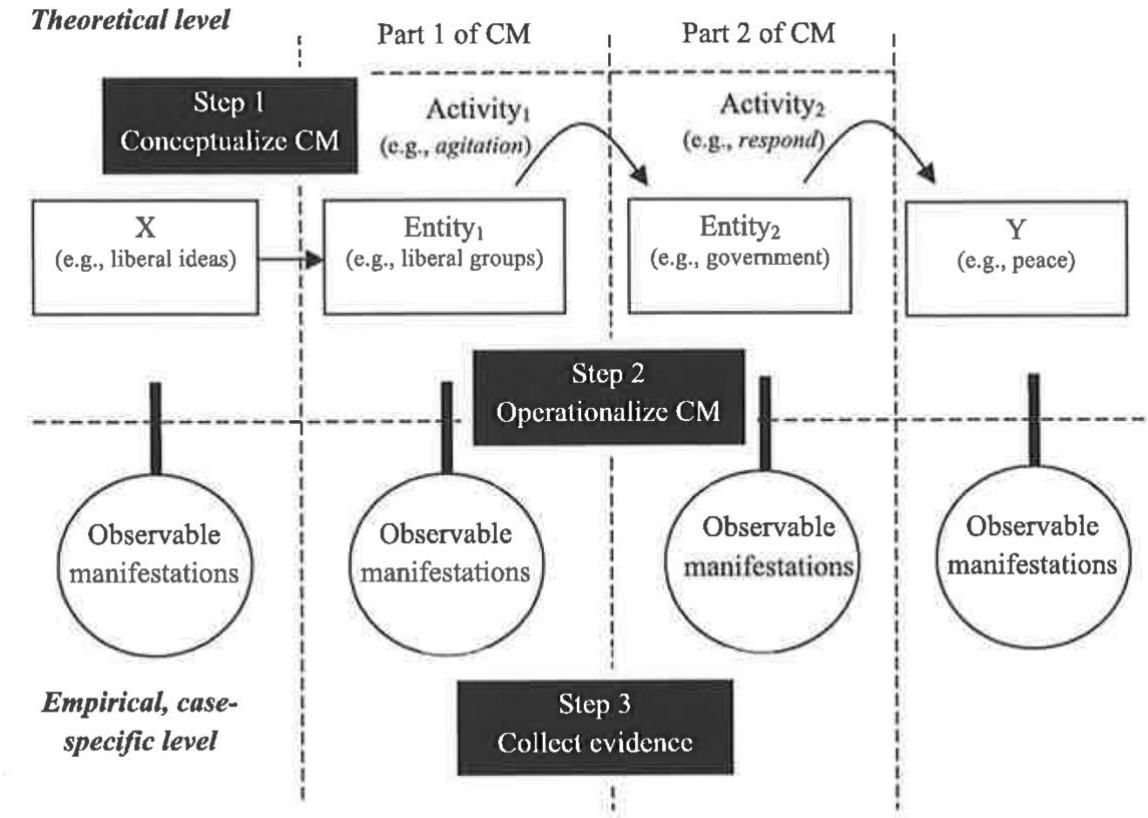
become aware of through a document analysis alone. Nevertheless, the interview data is largely used to *further substantiate* assumptions, as opposed to generate propositions of their own accord. The interviews provided an opportunity to examine policy development *in conjuncture with* legal policy provisions. Since interview data often reflects the specific stance of individuals it could lead to conclusions that could be criticised for their subjectivity. Thus, the main body of empirical data in this research project is gathered from primary and secondary legal provisions, and their interplay with envisioned goals and the policy outcome as part of the wider policy cycle.

The method of process tracing will serve as the fundamental methodological backdrop. Process tracing in social science provides the opportunity to trace intervening causal mechanisms (the causal links and processes) between one or more independent variable(s) and the outcome of the dependent variable. Process-tracing is a thoroughly valuable tool for theory testing, not only as a wide variety of observations can be made within a case, but also due to the requirement that these observations reveal a particular sequence in which events unfold in order to serve as a valid explanation for the case and for a relationship between variables. Put differently, the lack of independence among the observations constitute the compelling rationale for drawing inferences (George & Bennett 2005: 206-207, Bennett 2008). Process-tracing as a research method is well-suited to be applied to a rational choice framework. The method provides tools aptly suited to empirically test processes of decision-making. In particular, scholars working with a rational choice approach use process-tracing to analyse detailed historical case studies, and develop comprehensive explanations of complex events (ibid.: 208).

Beach and Pedersen refer to three different variants of process tracing: theory-testing process tracing, theory-building process tracing, and outcome process tracing. The differences between those three have important methodological implications for the proposed research design, for instance, how causal

mechanisms are understood and whether they can be used in a mixed-method design (2013: 3-9). If relevant theories on the phenomenon are well-established in the literature (as well as potential alternative explanations), and the hypotheses are sufficiently detailed to generate testable predictions on the processes that should have taken place if the hypotheses are well-suited to offer an explanation of the case, then process-tracing can be conducted for theory testing (Bennett 2008). As this research project and the four generated hypotheses are based on, and derived from, a pre-existing theoretical framework, theory-testing process-tracing will be applied. In theory-testing process tracing, a causal mechanism is hypothesised to be present between both X (the cause) and Y (the outcome) in a case (or a populations of cases), and the context allows the mechanism to operate. The goal is to go beyond mere correlations and associations between X and Y showing whether the hypothesised causal mechanisms of X contributing to the outcome Y is evident (Beach & Pedersen 2013: 9-11). In theory-testing process-tracing we know both X and Y (see Figure 1) and the researcher has either conjectures about a plausible mechanism or uses logical reasoning to deduct a causal mechanism from existing theorisation. The theorised causal mechanism subsequently needs to be operationalised, conveying the theorised expectations into case-specific predictions about the observable indicators that should be present in the case for each part of the mechanism at work. Once the mechanisms are conceptualised and operationalised, the researcher proceeds to gather empirical evidence. The analysis is conducted stepwise, ensuring that each part of the mechanism is present. It is very important to note that the evidence for the different parts can be very different from each other, making evidence for them sometimes incomparable. They do not read like a narrative as, for instance, evidence in the form of events are different from evidence in form of pattern evidence (for instance, the number of documents produced by different institutional actors). Thus, '[w]hat is being traced is not a series of empirical events or narratives but instead the underlying theorised causal mechanisms itself, by observing whether the case-specific implications of its existence are present in the case' (ibid.: 15).

Figure 1: Theory-Testing Process-Tracing (Source: Beach & Pedersen 2013: 15)



A challenging aspect of HI literature is the question of how to operationalise the two most important concepts: path dependency (including feedback loops and increasing returns) and critical junctures (Pierson 1996, 2000, 2004; Arthur 1989, North 1990). Both concepts are well explained from the theoretical standpoint, and at least the operationalisation of increasing returns is well explained in economic theory. However, in the institutionalist application the concepts pose a certain methodological challenge to the researcher, as it is often not entirely clear or thoroughly discussed how to measure these phenomena. Particular focus should be placed on identifying a comprehensive and methodologically distinct approach to identifying critical junctures.

How can we identify critical junctures as they manifest themselves? Capoccia (2015) provides a list of boxes to be ticked before we can assume that an event

truly qualifies as a critical juncture. Firstly, the unit of analysis must be defined (for instance, a political organisation, a public policy, a set of formal rules, a political regime). Then the following question has to be asked: a critical juncture in the development of what? In addition, a fallacy might occur here as sometimes researchers ascribe certain events of uncertainty and economic / political upheaval critical potential; however, we have to be careful with the selection as different kinds of shocks might influence some decision-making arenas and not others. Therefore, the researcher must carefully define the critical juncture as a contextualisation of the specific unit of interest. Secondly, once the unit of analysis is defined, potential 'candidate' critical junctures can be determined; this can be done with the help of existing literature. However, it is paramount that the critical potential of the juncture should be shown *empirically* and not assumed *a priori*. Thirdly, once potential moments of institutional change are identified, a test for structural effects causing the anticipated change should be conducted. Is the institutional outcome based on structural antecedents inducing the change or is agency the driving factor? Are the institutional outcomes based on political choices between available alternatives or are the choices assumed to be there but are based on structural preconditions? Fourthly, different candidate critical junctures should be assessed and the most critical ones identified. The structural test conducted beforehand will help to rule out some candidate critical junctures and a focus should be placed on those that clearly exhibit that agency and political dynamics played an important role in the development of a path dependent institution. Fifth, once the critical junctures are identified, the researcher should reconstruct historical events, identify the key decision makers and their respective interaction, and trace back which institutional alternatives would have been possible at the given time. Sixth, after institutional alternatives are defined, a counterfactual analysis can be conducted. It will help to show that a different institutional choice could have been made and, if such a different choice would have been made, the institutional arrangement would have created a durable institutional setting. Lastly, the researcher will present

evidence that the choices made during the critical juncture created and induced a long-lasting institutional legacy.

The choice of Member States suitable for each of the hypotheses will vary for different decisions, the selection depends on the timeframe that is assessed. This rationale is based on the fact that certain Member States were simply not part of the EU when a certain decision was made, while at the same time they might have become strong advocates of other decisions at a later stage. On the other hand, certain Member States might have been in favour of a particular decision, but might have taken a more moderate stance towards integration in a subsequent case. In addition, the selection of Member States will also be dependent on the size of consumption of energy, whether or not they are energy producers themselves, their respective total market size, and how dependent they are on imports from Russia, which is by far the largest energy supplier. Especially the last variable is of interest due to the exerted pressures on the external dimension of energy policy during the last decade. This data will help to create proxy variables to show certain preferences of Member States towards a particular policy.

As this work will employ a historical institutionalist approach incorporating rational choice (together with the sociological institutionalist strand), which argues that strategic actors strive to maximise their utility and interest based on a material basis, economic indicators will be incorporated into the analysis. These factors need to be taken into account as they determine and inform how actors behave due to certain economic settings. For example, the data will help to identify Member States' preferences and their willingness to agree to proposed legislative measures - in the case of high gas prices imposed on weaker Member States - and the power of economically strong Member States to bargain and dilute proposals. In addition, macro-economic factors will be useful to determine critical junctures.

Prices of energy commodities, for services and infrastructure, provided by energy companies and dealt with in energy markets, are powerful factors impinging on preference formation of different actors from a rational choice perspective. They inform *all* actors, whether on the supranational, the intergovernmental or the private business level. In order to determine specific preferences of actors based on economic considerations, my research will ask questions regarding issues surrounding wholesale prices, issues of competition, and legal provisions for energy suppliers. These findings will serve as supplementary economic indicators and help to explain how material ends informed different actor's preferences, such as the Commission's or Member States' rationale for policy behaviour and choices.

The data will be collected from respective websites like Eurostat, with some of the datasets available from 2004 onwards. Moreover, economic pressure from the internal to the external dimension, will be assessed by economic indicators. For example, in the case of the three Energy Packages (which were implemented to integrate the internal market), regulatory capabilities exerted through the means of a mere market rationale, might not have been sufficient to regulate external relations with third country suppliers and solve issues regarding energy security. From a historical institutionalist perspective, external shocks (like gas crises) influence markets and prices and, thus, *might* create the need for deeper integration – from both a rational choice (the economic need to keep energy markets functioning), *and* a sociological perspective (to enhance solidarity between Member States and to sustain gas flows to protected customers). Economic indicators help to gauge the pressure exerted on the internal and external dimension due to the measures to complete the internal market.

In addition, it is useful to render the import dependency of Member States visible, as there might be a significant variance between different states. It can be assumed that economic considerations highly influence the willingness of *all* proposed actors to support or reject proposals, at their own discretion.

Decisions and legal provision influence the margin of private business. The obligation to unbundle infrastructural assets from producers, laid out in the Third Energy Package, might have created incentives for investors to step into the energy sectors, which in turn might have influenced the stance of the industry towards certain legal provisions. This obligation, on the other hand, might have helped the Commission to take a more ambitious stance towards Member States that have been rather reluctant to support deeper integration. In this respect, economic factors are valuable and strong indicators for policy choices in the energy sector.

This research contributes to the existing literature by analysing incremental steps towards a comprehensive energy policy, in this respect the project of the European Energy Union. It analyses the implications such developments also have had for Member States regarding existing relations with third countries. The research will give an explanation about the factors that contributed to the further development of the institutional matrix and identify critical junctures that instigated institutional change. In this respect, the factors contributing to deeper integration, the interplay between institutional development and policy development, are a central point of the investigation. My research will answer the question *under what conditions does integration occur in the field of energy over time?* The ultimate goal is to provide a theoretical model that can not only improve our understanding of integration in the energy domain, but can also help explaining the obstacles to, and driving factors of, European integration per se.

Chapter III: When paths are defined: A Locked-in Institution

Energy is of vital importance to the EU's economy, warranting stability and prosperity for its Member States and citizens. Energy policy was enshrined as a cornerstone in the founding treaties of the EU, through the European Coal and Steel Community (ECSC) and the Euratom Treaty. Although bestowed substantial importance by its founding fathers, little progress was made in energy policy after initial steps were instigated in the early years of the Community, and energy policy suffered from substantially limited and shallow integration in the first four decades of the European project.

The next chapter will analyse the institutional developments in the time period between the late 1940s/early 1950s until the 1980s and test the first hypothesis. The hypothesis suggests that if no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. This means that in an intergovernmental environment where unanimous decision-making is the voting procedure and no critical juncture occurs, low integration can be expected as decision-making is substantially hampered even in the light of a changing environment. Institutions remain rigid, following their status-quo institutional trajectory even if actors face a sub-optimal institutional utilitisation.

H1: If no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. 'Small' critical events will have no effect on the institution.

However, at this point it is imperative to emphasise that a distinction between different institutional arrangements and their voting procedure must be made. In this regard, the make-up and institutional design of the ECSC, based on the Treaty of Paris, bestows its executive certain powers to balance the

sovereignty of the member states. In the ECSC Treaty the so-called High Authority was given specific powers over the economies of the member states and was solely responsible for implementing the Treaty. The consent of the Council was only necessary when addressing important matters, sometimes requiring unanimity, however, qualified majority voting was established as the common practice (Lucas 1977, Noël 1993).

In this early conception, the supranational body cannot be analysed through a testing of Scharpf's joint decision trap, as unanimity was not a requirement when policies were introduced or amended. However, this changed in the treaties that followed. When the European Economic Community (EEC) and the Euratom were formed, member states were reluctant to assign similar supranational powers to the executive as they did in the Treaty of Paris. In addition, it was deemed inappropriate by member states to give the "executive authority in fields where no clear agreement was yet foreseen or had yet been attempted" (Lucas 1977: 82). Under the EEC Treaty, specifically during the first two transitional stages – from 1958 to the end of 1965 - most Council decisions were subject to the procedure of unanimous voting (Noël 1993).

This example has important implications for the following analysis. We can thus assume that the ECSC, with its comprehensive supranational decision-making powers in the fields of the coal and steel industry, showed quite a high level of integration with substantial authority embodied by its executive branch. However, we must keep in mind that the ECSC can be treated as a forerunner to the subsequent projects of European integration, and that the architects of the EEC and Euratom envisioned institutions that encompass a much broader spectrum of economic development. Archer (1994) points out that "(f)rom the start it was clear that the ECSC might spawn other Community organizations and that there might be other 'supranational' institutions for other sectors of the economy" (ibid.: 85). The fact that these subsequent institutions were subjected to unanimous voting in the Council qualifies as a test for the first hypothesis.

Along similar lines we have to distinguish between different forms of energy to offer a precise analysis of how the institutional development in the energy sector can be assessed with credible explanatory power. The most common way is to distinguish between the different forms of energy consumption and to differentiate between the markets of oil, gas, coal, and power (electricity) (Schubert et al. 2016). Thus, when we test for the first hypothesis, we must keep in mind that only the coal segment of the Community's energy portfolio was solely regulated by the High Authority (which was endowed with *considerable* supranational powers) and that the other energy sources were located in the intergovernmental sphere, reflected by unanimous voting procedures. We can now proceed to the analysis, keeping this differentiation in mind to address possible criticism at an early stage and to make sure that the unit of analysis is clear, so that we can accurately test the aforementioned assumptions.

The first empirical section of the chapter explains the initial developments, starting with the creation of the first supranational bodies in Europe. As Lucas (1977) poignantly observed in hindsight, "[i]t is odd that energy policy, which has apparently been so unsuccessful, has frequently been presented as a reason or pretext for European integration" (ibid.: 1). The HI framework offers a methodological approach to analyse events in a sequential order, not merely assessing policy development at a given point in time, but providing methodological tools so that causal linkages can be put into a wider historical context. However, it is paramount that the historical account does not slip into a story-telling exercise, but follows a stringent method. The first step will gather apposite empirical data dependent on the unit of analysis; for instance, whether certain institutional developments were addressed or energy sectors were scrutinised. The second step will trace explanatory factors and evaluate causal linkages based on the HI framework.

3.1. The European Coal and Steel Community

The Second World War destroyed established energy networks and supply throughout Europe. Before the war, roughly 80 - 90% of primary energy came from coal (Matlary 1997, Lucas 1977) and the war diminished production and distribution to a large extent. The traditional coal producing countries like Germany, Poland and the United Kingdom faced various structural and endogenous restraints. Their distribution networks collapsed, indigenous mines were worked to the limit and equipment was not properly maintained. In addition, no investment was made to stimulate growth in the sector and unskilled labour was sent into the coal pits; in some instances even forced labour was deployed. Directly after the war, an *ad hoc* intergovernmental institution, the European Coal Organization (ECO) was created. Subsequently, its responsibilities were taken over by the Economic Commission for Europe (ECE) and in 1948 the Organization for European Economic Co-operation (OEEC) set up permanent committees for coal, electricity and oil. The Marshall Plan, which aided the reconstruction of Europe, made closer collaboration between European states a condition for economic support, and the OEEC was conceived to assist in this undertaking. In the United Kingdom, France and Western Germany, ambitious plans were designed in order to revive the troubled industry, which were thoroughly successful as the total quantity of imports (mostly from the U.S.) (Lucas 1977).

By 1950, Germany had recovered quite substantially. However, a solution had to be found which reconciled Germany's economic revival and France's demand for security, famously expressed by Charles de Gaulle who stated that "[t]he current of German vitality is thus turned westwards. One day German aggressiveness might well face westwards too" (de Gaulle as cited in Archer 1994: 73).

A means to address this predicament was to instigate a process of integration and promoting plans for a united Europe, conceived by turning towards the

coal and steel industries, which offered an attractive target for integrationists' strategic ambitions. The argument was threefold: first, these heavy industries were deemed necessary when fighting a war and hence posed a possible threat in the former Axis countries. Simply put, without steel and coal, no war. Second, and from an economic standpoint, the industries had important linkages in Western Europe. The steel industry in Saar was at that time linked to France but was supposed to be reintegrated into Germany. On the other hand, the French steel mills depended on the Ruhr for coking coal. The French steel industry was larger than its counterpart in Germany. However, the industry feared competition from reinvigorated Germany, as did the French coal producers from German mines. Third, there was a potential threat that a post-war depression would hit the coal and steel industries, similar to the one occurring in the aftermath of the First World War (Archer 1994). By utilising the coal and steel sectors as an ignition spark for integration, a potential remedy which simultaneously addressed multiple concerns was found, based on its utter significance for Europe's economy.

From an HI standpoint, the precarious economic situation as an exogenous factor prompted a critical juncture, which in turn shaped the initial demand for the genesis of an institutional framework. Moreover, it created an environment susceptible for powerful actors to steer the initial trajectory of the institution. During critical junctures, the scope and range of possible choices increase substantially. Critical junctures create demand for

> "institutional formation in moments of political openness and fluidity: the various types of political processes through which institutional choices are made: strategic interaction, coalition-building, norm-generating strategies aimed at influencing the perception of the legitimacy of institutional innovations by rule-takers, and choices made by powerful political leaders" (Capoccia 2015: 101).

Such factors and processes can be identified as playing a role in influencing the creation of the ECSC. However, as defined in the literature, critical

moments can be created by both external (exogenous) *and* internal (endogenous) forces (Collier & Collier 2002). Ideational factors and normative considerations also affected the inception of the institutional matrix, as the reconciliation of Europe was seen as a means to generate solidarity, prosperity and peace amongst European states. The institutional vehicle for this operation was meant to be the ECSC. As the treaty states, the ECSC was conceived as an institutional means to resolve "historic rivalries (…) among peoples long divided by bloody conflicts" and to bring prosperity by "concrete actions which create a real solidarity and by the establishment of common bases for economic development" (ECSC Treaty). From a political and economic view, the ECSC was instigated as an institutional measure to forge closer ties and strengthen solidarity between the two old historic foes, France and Germany, to annihilate the prospect of war, and to induce an impetus for integration and economic growth. By reducing competition over coal and steel, the backbone of industry at the time, and by providing accession to these markets for all participants, an "organized and vital Europe" could be created, "indispensable to the maintenance of peaceful relations" (ECSC Treaty).

The plan for the ECSC, known as the Schuman Plan, was presented on 4 May 1950 by the then French Foreign Minister Robert Schuman.

> 'The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims. The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible' (The Schumann Declaration 1950).

However, as Lucas (1977) and George (1996) point out, the plan was conceived in the French Economic Planning Commission (Commissariat du Plan) by Jean Monnet, and devised by the French Foreign Ministry. Monnet,

as an experienced civil servant and political economist who guided post-war reconstruction of the French economy, came to realise that in order to go beyond recovery towards sustainable economic growth and a higher quality of living for all citizens, the resources of a single nation were not sufficient and thus European states had to pool their resources (George 1996, Monnet 1955). Milward (1984) emphasises that the Monnet Plan had important implications on both the international and domestic domain. One of the main aims was to make the French economy more competitive in the future, especially in respect of the German economy. But further implications were addressed in the Monnet plan. The ultimate goal was that France should become Europe's largest steel producer, which was not an official policy, but a notion that was unofficially promoted. The projected increases in the output of the steel industries would only make economic sense if the French steel exports replaced former German steel exports. However, this would only be feasible by increasing the imports of coal and coke to the French market. The supply of coke and coal from Germany was immensely important. Thus, the Monnet plan fundamentally intertwined the French with the German economy, and offered a "programme for attempting to provide for future national security against Germany" (Milward 1984: 98).

This suggests that in addition to the normative requirement to foster peace in Europe, rational decision-making was significant and an essential driving factor in the initial phase of the institutional inception. As explained by an HI framework, the initial phase of institutional creation is characterised by a situation in which the different actors have primacy regarding their institutional choices. The French government especially demonstrated strong rational behaviour, characterised by utility maximisation. They joined the institution in order to increase their economic benefit and to reinforce a dominant position on European markets. However, as we will see later in the analysis, structural factors restrained the available choices of actors over time, and initial policy-decision created an institution that was characterised by sub-optimal outcomes.

Another important observation from an HI standpoint is the notion that Monnet's plans for the creation of a common market were just a starting point. Strategic actions by actors corroborate the proposition of HI that actors base their initial policy choices on rational decisions, but subsequently become entrenched in the institutional matrix over time, which *restricts and steers* the range of choices (Pollack 1996, 2006, 2010). Regarding strategic economic planning, Monnet had high ambitions and wanted to create more than just a common market. As liberal free-market systems had caused some negative effects for the French economy in the past, his vision was to create an economic community that should adopt common economic policies and rational planning procedures (George 1996). As such, coal and steel were just the starting-point. The goal was to extend the planning procedures to all levels and policy areas of the European economy. Integration should accelerate over time, it was predicted, and the so-called spill-over effect - the momentum created by integrating one sector leading to further integration in another sector – was believed to "lead inevitably to full economic unity" (Haas 1958: 283). However, European states would not have agreed to cede powers to supranational institutions all at once. The rationale to utilise coal and steel was reasoned through the immediate problems they created, as coal was in short supply and steel in excess. Thus, from a rational choice perspective, it made sense to harmonise these markets and undertake planning and production at a European level. Since steel and coal were such central components for all industries it was anticipated that rational planning of these two industries could only be done in a much larger economic context, "as part of a more general exercise in economic planning" (George 1996: 3). Monnet anticipated that economic spillover would be triggered by the creation of the ECSC, as the initial decision would lead to further integration and institutional development of other policy areas due to functional economic pressures.

The ECSC was perceived as a brilliant concept. West Germany accepted the Schuman Plan to fuse French and German industries, however, the final

Treaty eventually broadened its scope to include the Benelux countries and Italy. The Treaty was signed in Paris on 18 April 1951 and came into force on 23 July 1952; it was limited to be valid for 50 years, and expired on 23 July 2002 (Matlary 1997).

Two important points can be observed regarding preference formation. Firstly, the formation of the ECSC was owed to the decision to rebuild Europe and European states' economies, based on materialist considerations and rational decisions to promote prosperity and rapid recovery following the Second World War. According to this logic, preferences were *exogenously* given, and actors' behaviour can be explained through their wish to maximise utility through deliberate goal attainment and rational choices. As explained in the theory section, once actors chose an institution, the institution falls into equilibrium. No actor within the institutional setting, and with a constitutional right to amend the institution, has an incentive to do so (Pollack 1996). Institutions are coordinating mechanisms, which maintain and sustain these equilibria (Thelen 1999). The goal of the ECSC was to,

> "contribute to economic expansion, the development of employment and the improvement of the standard of living in the participating countries through the institution, in harmony with the general economy of the member States, of a common market" (Article 2 ECSC Treaty).

Secondly, if we now go back to the formation of preferences that led to the creation of the ECSC, we can identify *endogenous* factors that triggered institutional development. In addition to materialist considerations and rational decisions based on exogenously given preferences, there was also a prevailing idea to tie European states together in order to create stability and peace in Europe, rooted in a logic of appropriateness (see March & Olsen 1989). The idea to foster peace, trust and confidence between European States, and to end the long-lasting enmity between historical foes, has a very strong normative / ideational connotation, and therefore preference formation can also be understood through endogenous factors. From this standpoint,

economic considerations are a means to an end – namely, to further peace in Europe and to reinforce political institutions. It should be noted that this research is not claiming that normative factors are more important than economic factors for European integration (as, for instance, Manners (2002) claims when applying his framework of Normative Power Europe, in which the EU plays a unique role promoting universal values), but that both are contributing factors for institutional development.

Both exogenous factors (for instance, the restructuring of Europe on a basis of economic interdependence; different oil crises; economic crises, etc.) *and* endogenous factors (for instance, ideas about how to govern and develop acceptable policy for all involved actors; how to overcome collective action problems; perceptions of how decisions should be reached) have an impact on an institution and enhance (or create) the institutional framework. Material considerations are an important factor for the creation of an institution. Ideas, on the other hand, are commonly seen as a part of the superstructure rather than the basis of political economy (in this respect the institutional framework). However, they are important constituting parts of institutions. “To neglect the role of ideas (…) is to miss an important component of the economic and political worlds” (Hall 1989: 361).

Institutional change also needs *ideas* about how to *alter* an institution that is capable of effectively governing the institutional matrix. Rational Choice Theory can explain the conditions when institutions are in equilibrium. Actors have all the necessary information at their disposal, and, based on their interests and preferences, can make perfectly informed decisions within the institutional framework. The institution in turn, depending on a set of formal rules agreed between the actors, restricts and governs their actions in order to facilitate certainty and reduce transaction costs. Rational Choice Institutionalism sees "institutions as exogenous constraints, or as an exogenously given game form" (Shepsle 2005: 24). However, factors that instigate institutional change are not covered within such a framework. Hence,

Hall (1989) in a comparative study examined how Keynesian economic ideas, inspired by the economic depression of the 1930s, influenced institutional matrices in different countries, over the course of three decades after World War II, when many nations established the systems of macroeconomic management they use to this day. From this perspective, these new ideas created and altered prevalent institutions, and, as many countries still use institutions based on these ideas, instigated path dependent processes. Whether Keynes' ideas offer valuable economic solutions that bring economic stability after a fundamental crisis like the Great Depression (a critical juncture par excellence!), or whether austerity measures could be the remedy to curb economic downturn (as propagated by his opponents), should not be the point of discussion here. Rather, the important insight acquired is the answer to the question about how and when new ideas can develop enough momentum to successfully instigate institutional change.

The focus of the analysis, at this point, is the factors leading to the development of a specific institutional trajectory after a critical juncture, as opposed to an account of the institution in equilibrium. As stated by Hall (1989),

> "It is ideas, in the form of economic theories and the policies developed from them, that enable national leaders to chart a course through turbulent economic times, and ideas about what is efficient, expedient, and just that motivates the movement from one line of policy to another" (ibid.: 361).

In this respect, structural accounts can tell us much about the constraints that policymakers face concerning decision-making. However, policy making is based on creation as well as constraint (ibid.). In his conclusion, Hall (ibid.) provides explanatory evidence of why and when new ideas successfully advanced institutional matrices after the occurrence of a crisis. First of all, the key to the success of new ideas was the judgment of policy makers whether the new ideas were capable of resolving the (economic) problems at hand – the *(economic) viability* of new ideas has a pivotal effect on how they were

received. Secondly, a significant factor was the *administrative viability* of these ideas and the existing capacities of the institutions (in his analysis the units of analysis were different *states*) to implement them. Lastly, the reception of new ideas was contingent on *political viability*, the alignment of the new ideas and the goals and interests of political actors and different associations. As the following evidence suggests, all three factors were influential with regard to the development of the ECSC, supporting the proposition that ideas had an important role to play.

3.2. The institutional design of the ECSC

The six founding Member States joined the ECSC “based on a common market, common objectives, and common institutions” (Article 1, ECSC Treaty). Article 4 addressed provisions to abandon import and export duties and quantitative restrictions on the movement of coal and steel; discriminating practices among producers, buyers and consumers concerning prices as well as measures which obstruct the buyer in the choice of the supplier; subsidies or state assistance, or special charges, in any form used by the state; and practices concerning market distortion / division of markets (Article 4, ECSC Treaty). In addition, it established a High Authority, which constituted the supranational executive, a Common Assembly, a Council of Ministers, and a Court of Justice (Article 7, ECSC Treaty).

The High Authority was composed of independent experts from each of the Member States and could issue regulations addressing the market for coal and steel, which were legally binding for the Member States. In practice, Germany, France, and Italy sent two members to the High Authority whereas Belgium, the Netherlands, and Luxembourg could send one. As the Schuman Plan did not mention an institution that would represent the Member States, it was obvious that in order to guarantee support for the ECSC in general, and for the High Authority in particular, an institution had to be conceived representing the

interests of the Member States. The Council consisted of the governments of the six member states, was to be consulted by the High Authority, and had to agree to proposals of the High Authority by majority voting or on special occasions by unanimity (Glockner & Rittberger 2012). Majority voting was designed as a system of weighted votes, which meant that not only a majority of governments had to agree to a proposal, but also that a Member State, which accounted for 20 per cent of the total production of coal and steel in the community, had to be in favour of the vote (ibid.). As we can see, the coal sector was subject to Qualified Majority Voting (QMV), and therefore path-dependent processes could gradually evolve (as shown later in this chapter). The coal sector showed low institutional stickiness that made the gradual development of the institution possible. Actors perceived the ECSC as a suitable institutional vehicle to govern their coal industries.

Jean Monnet was appointed to be the first President of the High Authority. After a preparatory period of almost two years, the High Authority became truly supranational. It exercised powers which were formerly under sovereign control and which were assigned to it by the Member States. One of these powers addressed the capability to fix prices. The High Authority exercised these powers immediately because the prices for coal were continuously rising following the end of the war, so maximum prices were set to avoid prices hardening. Price control was controversial from the beginning, because of potential market distortion. However, the High Authority made clear that if it did not control the prices, powerful cartels in the Ruhr basin and in the coal pits of the Nord and Pas-de-Calais coalfields would determine the price (Lucas 1977). These powers were conferred upon the High Authority in Article 65 and 66 of the Treaty constituting the ECSC (ECSC Treaty). The High Authority considered the problem of coal cartels as a priority issue, and two powerful agencies, the German GEORG and the French governmental agency ATIC, were targeted as infringers (High Authority 1955a). The French government appealed at the Court of Justice against the High Authority, however, in the

end both organisations were successfully changed (High Authority 1956a, Haas 1958, 76 & 77).

The second important task of the High Authority was to assist the increase of the production of coal. The coal industry was still suffering from the war and cartels had set coal prices quite high, which made new investment in the sector unattractive. Due to the efforts of the High Authority and strong demand, the production of coal grew steadily until 1957. However, the total demand for energy increased faster than industry could provide coal; therefore, the difference was balanced with oil, which was seen as a supplementary fuel (Lucas 1977). Between 1955 and 1975 the High Authority predicted an increase in total energy requirements of no less than 50 per cent, and although gas played a role in the energy equation, that the heaviest demand would be for coal and oil (High Authority 1957a). The High Authority suggested the utilization of dual firing power stations for the generation of electricity (power plants that can use *either* coal *or* oil), to uphold energy security and to counter-balance possible shortages of coal supply (ibid.). 1957 constituted a turning point in this equilibrium. Even though two mild winters and an economic recession diminished demand for energy, oil was still imported at the same rate. Before the war, oil had little importance in the Western European economies. During this period, attitudes of national governments towards the oil companies were formed (Lucas 1977).

Overall, from an economic standpoint, the ECSC was an institutional endeavour with rather limited success and “its far reaching hopes and expectations could not be met” (Schubert et al. 2016: 94). The relatively mild winters of 1958/59 led to a decline in total coal consumption, causing a mounting level of coal stocks at pitheads. The High Authority decided against the declaration of a manifest crisis, which would have permitted import restrictions and the allocation of production quotas (European Community Information Service 1958). However, France and Germany responded to the surplus in a manner that was prohibited by the Treaty and against the will of

the High Authority: they put up restrictions on coal imports to protect their respective markets. The High Authority could not enforce the treaty due to a lack of powers. Moreover, it could not stop oil, as an exogenous factor influencing the institution, gradually gaining ground in the energy market (Schubert et al. 2016: 94). The Council of Ministers and the High Authority tried to address the problem that energy sources other than coal developed a bigger share of total consumption at a faster pace. Moreover, they came to realise that due to these developments a reliable forecast of the consumption of coal could not be carried out unless energy policy was brought into a wider context. Therefore, they aimed to harmonise the whole energy sector through a coordinated energy policy (Special Council of Ministers 1957).

As the evidence suggests, policy-making was characterised by sub-optimal outcomes and a shallow performance of the institution. Nevertheless, as predicted by the applied HI framework, once an institutional path was pursued and accepted, the institution created incentives for the actors to stick with their initial choice and not abandon the institution (Pollack 2006), even in the light of an unproductive path (North 1990). Based on increasing returns, the ECSC deployed strong path dependent processes, adaptive expectations and coordination effects, as actors were stuck with their institutional choices regardless of the ECSC's shortcomings concerning the governance of the coal sector. In this regard, the institution had a stake in evolving policies that reinforced the existing structures and rules (North 1990).

3.3. EURATOM

Monnet's choice to integrate the coal sector rested on two assumptions. The first was that coal would remain "a vital element in energy supplies for many decades to come" (High Authority 1957a: 1); an assumption that was prevalent in the 1950s. Especially electricity generation was meant to "give coal practically an unlimited market" (ibid.). The second assumption was that the

High Authority would take an interventionist approach to the production of coal. Monnet seemed to have hoped that the High Authority would create general economic plans for the whole Community, similar to his own efforts within the French Economic Planning Commission, directing the leading industrial sectors and providing a framework in which both private enterprises and the state-sector could harmonise their decisions on investment. This approach was addressed as *indicative planning* or *dirigisme* ('guidance' or 'steering') (George 1996).

However, the High Authority of the ECSC, which formally had clear supranational powers, did not become *dirigiste* in its orientation. On the contrary, it confined its activity to promoting coal trade according to free market principles (Matlary 1997). Disappointed by the institutional development of the High Authority, Jean Monnet resigned from his post. In his resignation speech, he spoke of his conviction that the ECSC was the beginning of a process of integration that would trigger the creation of a truly federal union, the United States of Europe. He was convinced that the creation of the United States of Europe and a "European Common Market as big as the American market [was] crucial for the prosperity of Europe's peoples, the well-being of our workers and the solution to our problems" (Monnet 1955). Charles De Gaulle, the French president between 1959-69, mocked Monnet as "the great American" (Talbott 2014). After his resignation in 1955 he founded the Action Committee for the United States of Europe, a position he held until 1975 (CARDOC 2010). As an independent organisation committed to federalism, it was comprised of leading political and trade union leaders, and promoted integration through the use of atomic energy, the realisation of the European internal market, and the alignment of social policies (High Authority 1955b).

Monnet's resignation from the High Authority was not driven by desperation, but was aimed "to help the '*relance*' – the re-launching of Community Europe" (Archer 1994: 87). The idea to integrate the sectors of transport, oil and atomic energy, and to create a common market among the Member States of the

Community, were proposed and drawn up in the so-called Benelux Memorandum in 1955. In addition, the memorandum suggested that both the Atomic Energy Community and the Economic Community would need new supranational institutions (Archer 1994).

The Memorandum formed the basis for the Messina conference (held from 1st – 3rd June 1955), where the foundation was laid to create the two Communities, a task that was delegated to a committee of the representatives of the six Member States, and headed by the Belgian Foreign Minister, Paul Henri Spaak. The committee eventually came to be known as the Spaak Committee which subsequently worked on the technical details of the proposals - not without a great deal of internal wrangling, as one might assume (ibid.). However, on 29th of May 1956 the twin proposals set forth in the intergovernmental report were discussed at a conference in Venice. All nuclear industry related issues were addressed with the creation of Euratom, whereas for "all forms of conventional energy, oil, gas and electricity, the solution proposed [was] to place them under the High Authority of the ECC&S [(European Community for Coal and Steel)], at least until the time [came] when the question of European institutions would definitely be solved" (High Authority 1956b).

As there was never a perception that nuclear energy was a sector that required a supranational institution, the motives leading to Euratom were purely political. Jean Monnet's Action Committee, in particular, pursued an agenda utilising nuclear energy as a momentum for political ends. As Lucas states,

> "[w]hen the political motives required technical support, they fell back on a technical vision of the future which was an extreme view that did not enjoy the best of the arguments even at that time" (Lucas 1977: 28).

Hence, endogenous momentum was deployed by the Action Committee for institutional change and to amend the predominant institutional trajectory. This evidence corroborates the claim that, when assessing the formation of

preferences of actors, “ideas render material considerations legible through processes of communication, coordination, and persuasion” (Fioretos et al. 2016: 12). Similarly to the inception of the ECSC, after the initial endogenous spark concerning institutional formation / change, subsequent preference formation of Member States was rooted in rational decision-making and calculations regarding a trade-off between economic interests and security considerations, which we will now explore.

Following a two-day session between the heads of state of Belgium, Germany, France, Italy, Luxembourg, and the Netherlands, agreement was eventually reached in February 1957 in Paris (High Authority 1957b). The Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) were signed in Rome on 25th March 1957 (High Authority 1957c). What stands out is the omission of legal provisions addressing energy policy in the Treaty establishing the European Economic Community. The decision not to incorporate the energy domain was significant for future policy development insofar as, from an HI standpoint, early decisions become more and more entrenched over time and shape and constrain the range of possible policy choices in the future. Although Euratom was mentioned throughout the document, not a single reference to other energy-related issues was made (EEC Treaty 1957). Hence, by excluding the sectors that were not covered by the ECSC and Euratom Treaty, hampered their further development from the offset. That said, the Treaty of the ECSC and Euratom created two institutions with considerable supranational powers in their respective policy field.

Deubner (1979) drew a detailed picture of the negotiations leading to the Euratom Treaty and the final outcome. Prior to Messina, France was reluctant to accept the prospect of a general common market and instead proposed sectoral integration in specific economic policies. It was the first industrialised country after the war that strived to develop a nuclear programme on a large scale and endeavoured to produce nuclear weapons. France needed supplies

of uranium and technology and therefore proposed the creation of Euratom (Deubner 1979). Germany was not overly enthusiastic about Euratom but needed the support of France to bolster the project of the common market (Matlary 1997). As a consequence of their deteriorating international standing, aggravated by France's involvement in the failure of the Suez Canal intervention of 1956, France eventually agreed to the common market and Euratom (ibid.).

The crisis was instigated by ongoing tensions between Egypt and Israel on one side, and the UK and France on the other, and led to the closure of the Suez Canal, which was one of the major oil transit routes. The Suez Crisis raised serious concerns regarding a secure supply of oil, needed for the generation of electricity, thus creating the opportunity to frame Euratom as a means to solve Europe's energy problems (Brutschin 2016). Moreover, the crisis can be seen as the first, however missed, opportunity of the High Authority of the ECSC to extend its competence and to gain influence in the gas, oil and electricity sector (Schubert et al. 2016). The lack of response to the crisis can be largely explained by the contractual arrangements at that time, with the majority of the Western oil companies securing good oil deals, and the relatively stable political situation in the producer countries (Brutschin 2016). In addition, the importance of oil was not yet fully appreciated in the industrialised world. Thus, the role of Euratom was envisaged as a means to create a powerful nuclear industry capable of creating vast amounts of energy (Matlary 1997, Euratom Treaty 1957).

As previously stated, the initial trigger concerning the formation of Euratom and the EEC was rooted in an *idea* about how to further enhance the institutional matrix and foster deeper integration, and not the outcome of actors' choices based on exogenously given preferences and perfect information. The evidence corroborates the claim of Hall and Lamont (2013) that, "interaction between neoliberal ideas about states and markets and the material endowments of actors and groups" (ibid.: 12) is the important driving

factor for initiating change. Along these lines, political considerations (and not rational calculations) founded the basis for the idea to create Euratom as a means to invigorate the European project. Even more so, in the case of France, the institution was meant to reinforce the process of securitisation. Hence, preferences were endogenously constructed on the perception of state security. Notwithstanding the importance of rational calculations regarding costs and benefits during the subsequent bargaining process for both institutions, the starting point for institutional change can be best explained by assumptions resting on an ideational foundation and endogenous momentum created by agents inside the institution.

Another important observation is the missed opportunity of the High Commission to integrate oil, gas and electricity (Schubert et al.: 2016) into the institutional framework and create policies for the respective sectors. This case serves as evidence for a short counterfactual analysis. The counterfactual analysis is a means to show that a different institutional choice could have been made and that this different institutional arrangement could have created a more effective institution (Capoccia 2015). As we will see, the biggest challenge for a comprehensive energy policy in the three decades following the crisis was the pervasive situation that no legislation could be passed without unanimous consent within the Council. Incorporated in the theoretical model as a proxy variable for institutional stickiness, the unanimity requirement created an adverse institutional environment foreclosing any real advancement in terms of secondary legislation. Hence, the Suez Crisis was an important and missed opportunity for the Communities to integrate the policy area much earlier than the actual historical record shows.

Lucas (1977) points out that it would be an exaggeration to say that Euratom was a mere trade-off between the French and the other five Member States, who were (un-)enthusiastic about Euratom in varying degrees. However, it is fair to say that without the significant support of the French government, Euratom would never have been formed (ibid.). Although supportive of a civil

nuclear programme in general, the U.S. was highly critical of French aspirations, due to their own ambitions to control the world market and flood it with large quantities of cheap enriched uranium. The U.S. feared that it would lose its dominant economic and technological position. Moreover, they had geopolitical concerns as the leader of French nuclear efforts was a communist (Deubner 1979). The French aspired to the creation of a supply agency to buy uranium on the Western European market (from France; with high prices), a common European nuclear market, and for a joint enrichment plant in order to brake the U.S. monopoly (also in terms of reprocessing). In addition, France supported joint research and development efforts to "secure the place of their own lines of development inside Europe" (ibid.: 216). From a French standpoint, which was purely self-interested, the rationale behind Euratom was reasoned through the aspiration to get cheap access to the nuclear know how of other Member States, a secure supply of high quality uranium from the Belgian Congo, and a subsidy for its atomic research programme financed via the Community budget (George 1996). Moreover, France planned to build its own nuclear military capability (Schubert et al. 2016).

The U.S. overtly opposed the attempts to create a European nuclear arsenal and demanded that European efforts to design a uranium isotope separation plant had to be abandoned – in exchange for US technology. Eventually, the U.S. signed an agreement with Euratom to build six nuclear power plants, helped financing it and delivered technological assistance, which in turn enraged the French President Charles de Gaulle (ibid.). Deubner (1977) denoted that Euratom was a "stillborn 'integration' scheme" (ibid.: 223). Although conceived as a monopoly supply agency, the final treaty had minimal relevance as an instrument of deeper European integration as Member States could buy uranium on the world market from the cheapest supplier (the US) and only formal authorisation had to be given by the agency (ibid.). The US sold cheap uranium rods to West Germany (George 1996). No obligation to construct a joint enrichment plant was in the treaty and therefore France constructed its own independent enrichment facility. No reprocessing plant

was authorised; jointly directed national and community research was very limited. In the end, even the proposed common market for atomic energy goods did not unfold its full potential due to national economic forces (Deubner 1977).

The Commission was slow to start work (in late 1959 due to the illness of its first president) and when it finally did, national rivalries became inherent (George 1996). Italy and West Germany soon developed their own nuclear research agenda following Euratom. France, with its biggest nuclear research programme in place, and who had anticipated taking the most advantage of Euratom subsidies, became less supportive of Euratom in general (Bache et al. 2014). Moreover, the Commission clashed with the French government over the right to inspect French plutonium facilities (which was not supported by the Council) and a proposal to create a joint programme with the U.S. regarding reactor development. Although the Commission won by majority in the Council regarding the reactor development, the French government insisted that budgetary concerns had to be decided by unanimity, thus, ultimately weakening the Commission's position (ibid.). "Euratom moved perceptibly from the development of a powerful nuclear industry within the Community to the coordination and supplementing of national programmes – a move very much in keeping with French desires" (George 1996: 158). By the time the three executive institutions were merged in 1967, Euratom almost forfeited its institutional viability, with only the research centres, the Treaty and the personnel representing the institution. "These disembodied entities, without any real functional relationship, have nevertheless continued to affect community energy policy, much as chickens continue to run around after their heads have been cut off" (Lucas 1977: 44).

If we now move on to an analysis of the development of a *common* energy policy concerning *all forms* of energy, we have to take endogenous and structural factors into account. Firstly, the **endogenous factor** we should be aware of are the intrinsic difficulties to implement a common policy posed by

the institutional design of the three institutions. Formal competences were only given to the institutions regulating coal policies and nuclear energy, leaving the three Commissions with no say regarding any other forms of energy. From an HI standpoint, the requirement to reach decisions by unanimity in policy domains not provided for by the Treaties created what Scharpf (1988) called "pathologies of substantive public policy" (ibid.: 267), which informs the reasoning for the proxy variable concerning high institutional stickiness. The theoretical model predicts that, when the institution shows high institutional stickiness, and the absence of a critical juncture, the institution will display a process of low integration over time. In this regard, the ECSC Treaty stated in Article 95 that,

> "(i)n all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of High Authority is necessary to attain, within the common market in coal and steel (…) the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted" (ECSC Treaty Article 95).

As the evidence shows, apart from the coal and nuclear sector, the institution displayed high stickiness and an institution that was locked-in.

The EEC treaty stipulated that powers already conferred on the institutions of the ECSC were untouched and no reference was made to the use of natural resources. Only Article 103 provided the Council with the formal powers to put forward a directive to overcome difficulties in the case of a shortage of supply of certain products, a loophole that was later exploited to implement the legal provision for the regulation on stock management (which will be explained later) (Haghighi 2007). The Euratom Treaty can be seen as a major obstacle to the development of a common energy policy – especially from a supply security standpoint - with respect to conventional energy sources in Europe. Nuclear energy was conceived as a panacea concerning the supply security, rendering concerns for other forms of energy obsolete and diminishing the dependence on third country suppliers. The major goal was to create a

powerful nuclear industry that should provide extensive energy resources (ibid.). However, as already discussed, Euratom did not unfold its expected supranational powers due to “the victory of national economic forces” (Deubner 1977: 223). In addition, another main obstacle to an aligned energy policy was the diverging preferences of the three executives. ECSC officials advocated for the protection of the European coal markets, EEC officials preferring a market-based approach based on cheap imported energy, and Euratom officials championed nuclear energy to render both coal and imported energy obsolete (George 1977). The internal differences and vested interests of the different executive powers posed a major stumbling block to the development of an energy policy addressing different sorts of energy.

Secondly, **the exogenous structural factor** that coal lost its predominance as the major energy source quite rapidly was a development, which was not anticipated when the three communities were formed in the 1950s. In addition, due to the enthusiasm for nuclear power and the inherent ‘modernist’ and technical musings of how to deal with a growing energy demand, oil was completely ignored, although it was used as a supplementary source of energy. Only two forms of energy were assumed to be of real significance in the long term (George 1977). The first was the coal sector, which was to be maintained for reasons of political stability, due to commitments to the labour force and social stability in general (Lucas 1977). The second was nuclear energy, the future of energy, paving the way to a prosperous Europe and helping to “contribute to the raising of the standard of living in the Member States […] by creating the conditions necessary for the speedy establishment and growth of nuclear industries” (Euratom Article I). Thus, control of other sources of energy, like oil and gas, remained in the hands of Member States who did not want to cede their advantageous relationship with producing countries (Haghighi 2007).

3.4. Energy Policy in the 1960s and 1970s – a locked-in institution

Gas did not play an indispensable role in the early / mid 1960s. The first pipelines from the Soviet Union to the European Communities were built from the late 1960s / early 1970s onwards (Högselius 2013) and concerns regarding the security of supply did not arise before the 1990s (Brutschin 2013). Hence, oil became the energy source on the rise. We therefore should turn our analysis to the factors leading to such developments, keeping in mind that matters regarding oil needed unanimous decision-making if addressed in a proposal. At first, the increase in oil imports into the Communities was reasoned through the inability of Western European coalmines to meet increasing demand for energy, and oil from overseas was considered a boon when security of energy supply posed a threat (Lubell 1961). However, after Europe faced overproduction of indigenous coal during the mild winters of 1958/59, which happened to coincide with an economic crisis between 1957 and 1959, long term commitments to import coal from the United States, concluded in previous years of shortage (sold at a higher price than during the recession), and the inflow of cheap oil, led to a decline of domestic coal production (Lucas 1977). As a result, the three big coal producing countries in Europe (West Germany, France, and the United Kingdom) cut back on coal production, and the downturn was reflected in the pessimistic forecasts of both the OEEC and the ECSC. When compared, the Hartley Report of 1957 (OEEC) and the Robinson Report of 1960 (ECSC) clearly show this trend (see Table 3). In just three years we see a downward revision of the indigenous production of coal of 75 million tons in 1965 and 90 million tons in 1975, respectively (Lubell 1961).

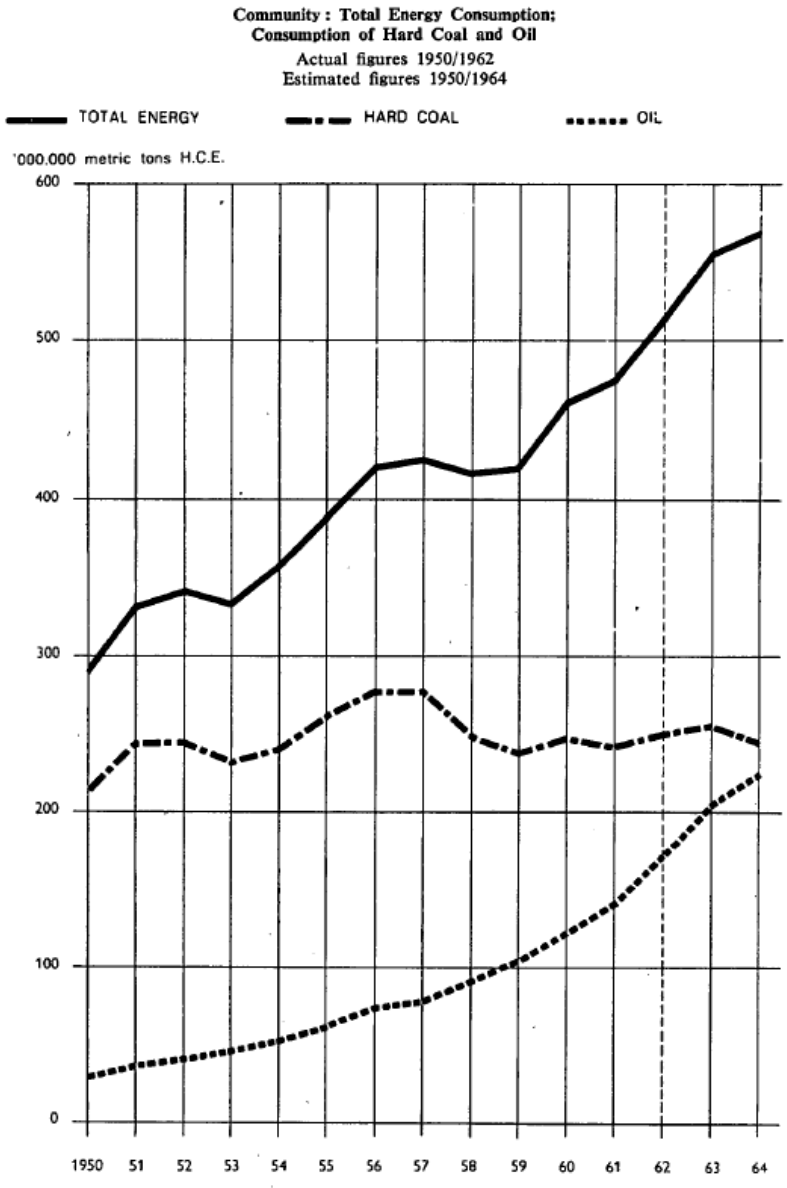
Table 3. Comparison of the Hartley Commission Report with the Hartley Commission Report (in millions of tce - tonnes of coal equivalent)

	ACTUAL		PROJECTED					
			Hartley Commission		*Robinson Commission*		*Change in estimates*	
	1955	*1958*	*1965*	*1975*	*1965*	*1975*	*1965*	*1975*
Total demand	777	811	1060	1360	1050	1425	—10	75
Indigenous production	603	621	720	860	675	790	—45	—70
Coal	477	472	520	520	445[a]	430[a]	—75	—90
Other	126	149	200	340	230	360	30	20
Lignite	(30)	(32)	(35)	(35)	(45)	(60)	(10)	(25)
Crude oil	(13)	(18)	(30)	(50)	(30)	(50)	(—)	(—)
Natural gas	(7)	(10)	(15)	(25)	(25)	(60)[b]	(10)	(35)
Hydro-power	(56)	(69)	(90)	(130)	(95)	(140)	(5)	(10)
Nuclear energy	(—)	(—)	(10)	(80)	(15)[a]	(30)[a]	(5)	(—50)
Other forms	(20)	(20)	(20)	(20)	(20)	(20)	(—)	(—)
Import requirements[c]	174	190	340	500	375	635	35	145
Coal	28	7	40	50	60[b]	60[b]	20	20
Oil	146	183	300	450	310[b]	500[b]	10	50
Natural gas	—	—	—	—	5	75	5	75

SOURCE: OEEC, *Robinson Report*, pp. 19, 59, 114.

Thus, it can be stated that the Commissions were aware of the predicament concerning the coal sector and amended their rather optimistic view of the mid 1950s to a more accurate version in the early 1960s. The next graph shows that the consumption of coal stagnated on the energy markets between 1950 and the mid-1960s (and deteriorated vis-à-vis oil), whereas total energy consumption increased quite rapidly.

Table 4 Oil consumption vs. consumption of hard coal



Source: High Authority 1964a

Energy markets were under exogenous structural pressure as oil advanced at the expense of coal and oil prices fell. The low oil prices were enabled by new oil discoveries in the US and the Soviet Union in the 1940s and 1950s, the discovery of the world's largest oil field in Saudi Arabia (Ghawar field, 1948), and discoveries in Libya in 1956 and 1959 (Brutschin 2016). In 1960 coal sales were not higher than in previous years but sales of oil had increased by more than 25%. The High Authority warned of the consequences of these

developments as the livelihood of Community miners would be endangered, the reliance on energy supplies from outside of the Community evoked security concerns, and the investment represented by the coal industry would be threatened. Thus, assuming rationality, the three Executives, set up in the so-called Inter-Executive Working Party, worked on measures for the coordination of energy policies in the Community countries (High Authority 1961). In total, three memoranda were issued, two addressing the coordination of energy policy (March 1960, January 1961) and one addressing imports of coal from third countries (October 1961) (High Authority 1964a). After having examined the proposals, the six ministers asked the Community Executives to go beyond the objectives put forward in the original proposals and to draft proposals for an "energy policy designed to culminate in the establishment of a Common Market for Energy" and emphasised that the "Executives need not confine themselves to the legal possibilities afforded by the existing treaties" (ibid.: 73).

This evidence renders visible the Council's initial willingness to tackle the imminent problems posed by the substantial structural changes in the energy sector, and to find effective and acceptable solutions to these new challenges. The invitation of the Council to go beyond existing legal provisions can be assessed as an awareness of, and reaction to, the pressing matters induced by energy markets and the growing awareness of the economic and socioeconomic effects these markets have on various other policy areas, depicting the intertwined nature of energy policy. The High Authority duly took on the task and prepared a draft resolution in June 1962. The purpose to create a common policy was reasoned through the growing share of imported hydrocarbons, to address the potential opportunities posed by the development of nuclear energy, and to tackle social issues. The goal was to create conditions to ensure a cheap, stable and secure supply of energy in terms of cost and available quantities, fair competition and freedom of choice for consumers (Haghighi 2007). The unexpected observation is that many of these ideas and propositions can be found in contemporary policy proposals regarding the Energy Union (which we will explore in chapter six).

However, in the end “it proved to be impossible to secure the Council’s unanimous acceptance of the draft resolution” (High Authority 1964a: 78) which was an already amended version of the original proposal made by Government representatives. The draft resolution merely represented the minimum commitments in relation to a common energy policy on which Member States might agree at that time. The three Executives considered it wholly inadequate because it did not address a common energy policy at all. The adverse outcome of the decision fuelled concerns within the High Authority, and the European Parliament “evinced deep disquiet” (ibid.: 79). This serves as strong evidence for corroborating the first hypothesis, that in the absence of a critical juncture, a locked-in institution, which is subjected to the highest degree of institutional stickiness, is trapped within its own institutional design. “[J]oint-decision systems […] are able to block their own further institutional evolution” (Scharpf 1988: 267). If decision-making is subjected to unanimous voting, it is very difficult, if not impossible, to reach agreement on effective policy instruments addressing contentious issues. Even highly potent exogenous forces - oil flooding the market and coal losing its predominant position - that impacted the institution, and which had severe repercussions for the institutional performance, could not alter the path of the institutional trajectory. Under such conditions, there is no ‘gradualist’, stepwise way of transforming the institution towards greater policy potential (ibid.). The evidence suggests that, in order to equip the institution with the capacity to react to exogenous change, the policy area under concern must be addressed in primary law and QMV has to be the decision rule. This was the case for coal and nuclear power. Whether these policy provision showed effectiveness is not the exercise here, but rather, whether the institution was able to create policies *in the first place*. For those sectors in energy policy not provided for by the Treaties, policy evolution was severely hampered. Moreover, policy proposals gearing towards the creation of a common energy policy represented merely the smallest common denominator of Member States, as each Member State had the power to veto a given policy proposal if any of the

provisions included were against a Member States' own preferences. Therefore we see a process of low integration in the early 1960s.

The inability to reach agreement not only hindered the creation of a common energy policy, but also prevented the Communities from tackling the extremely difficult and immediate problems with regards to coal. The coal producing countries introduced more and more measures that were national in nature (due to external pressures and serious social and regional complications) and, thus, less and less in line with the spirit of the ECSC Treaty. From a free market perspective, this state of affairs could not be allowed to continue, and issues had to be resolved as soon as possible. The High Authority was "determined to leave no stone unturned to bring about a comprehensive solution" and stated that it was "essential that some definite prospect of an ultimate energy policy should emerge soon" (High Authority 1964a).

A forecast made in 1964 predicted rapid growth of the Community economy (4.6 % per annum in GNP), and stated that the total energy consumption was also expected to increase substantially (about 4 % per year). Thus, further concerns regarding the share of coal in terms of total energy consumption were induced, even when the production of other energy sources was expanding. More and more of the energy requirements would have to be met by energy imports, mostly by the acquisition of crude oil. As these imports were assumed to grow also by a large amount over time, questions of stability and security of supply arose, both in terms of tonnage and prices (High Authority 1964b). It was predicted that by 1970 barely one third of total energy requirements would be satisfied by coal, and even if production quantities were sustained, it would decrease to 33% in 1970 and 27% in 1975 (ibid.).

By the middle of the 1960s, oil had superseded coal as the Communities' most important primary fuel (Duffield & Birchfield 2011). Oil became very cheap and was available in large quantities. In response to this development, in 1960 the Organization for Petroleum Exporting Countries (OPEC) was created to

counterbalance the oil surplus and extremely low oil prices, a development that was furthered by the Soviet Union's entrance to the world oil market. Russian oil was much cheaper than its Middle Eastern counterpart. Therefore, in order to balance the bargaining power of exporter countries, the Head of the Directorate-General of Economic Affairs and Energy (ECSC) proposed that agreements between Member States should be made to coordinate energy policy at the European level. However, in the end this proposal never materialised (Brutschin 2016). As we can see in Table 5., things got even worse in 1970 than anticipated in the already pessimistic predictions of the mid 1960s. By 1970, only 22% of primary energy consumption was covered by coal, whereas oil accounted for almost 60% and "the shares of a decade earlier had been almost exactly reversed" (Duffield & Birchfield 2011: 3).

In addition, gas gained in importance with a share of almost 10% compared to nearly zero in 1950. Natural gas appeared on the energy markets in the mid 1950s. Its performance had been particularly impressive as a consequence of increasing production in the Netherlands, and gas ousted coal from some of its traditional markets, thus, accelerating the decline of the consumption of coal. Nuclear energy did not satisfy initial expectations of its contribution to the energy mix; this was not accounted for by the technological advance itself, insofar as the nuclear technology reached a certain maturity. However, the fact was owed to the plentiful supply of cheap oil, rendering competitive prices of nuclear energy difficult (Commission of the European Communities 1972a).

Table 5. Total energy consumption broken down by fuel source in terms of TCE (tonne of coal equivalent) millions and % share

Domestic consumption of primary energy in the Community according to energy source (in tce millions)

	1950	%	1960	%	1970	%
Pit coal	210	70	243	52	189	22
Lignite	23	8	32	7	33	4
Petroleum	35	12	139	30	501	59
Natural gas	1	—	13	3	73	9
Primary electricity	31	10	39	8	49	6
Total consumption	300	100	466	100	845	100

Source: Commission of the European Communities 1972a

The main obstacles to the solution of urgent energy issues persisted. The institutional design of the European Communities was never intended to capture the shift in the energy mix, creating institutional inertia, as "[t]he community institutions were never given any explicit jurisdiction over oil and, later, natural gas, not to mention any general competence in the area of energy policy" (Duffield & Birchfield 2011: 3). These omissions produced the inherent tendency for policy outcomes to be sub-optimal. From an HI standpoint, no institutional development could be initiated. The early decisions to exclude specific sectors of the energy domain from the institutional arrangement, conferring no competences to the Communities in these sectors, foreclosed the development of increasing returns and institutional alignment. Relatively small events and decisions early in the sequence, shaped and constrained decisions later down the sequence, and developed wide-ranging consequences for the institution's ability to response to the changing context. Had the institution been exposed to low institutional stickiness (the second IV) based on QMV and path dependence, introducing a certain level of inertia, the matrix could have been gradually and incrementally changed. Under the proposed theoretical model of this thesis, a critical juncture was needed to jolt the institution out of the prevailing lock-in.

However, that is not to say that the Commission did not fight hard to bring forth proposals addressing the energy dilemma. In 1968, the merged Commission,

on its own initiative, presented the memorandum “First guidelines for a Community energy policy” (European Commission 1968). During the preceding months, the divided responsibility of the three Executives were frequently cited as one of the causes for slow progress. Unfortunately, the preparation of the guidelines took up two years and much of the psychological momentum was lost along the way (Lucas 1977). Documents like guidelines and proposals for secondary legislation serve as evidence for the analytical unit of *intended goals*, as discussed in chapter two on research design. They outline the anticipated goals the institution tries to achieve. In this regard, they severe as a ‘blueprint’ for the *policy output*; the legislation the institution intends to deploy to govern energy policy.

The Commission based the guidelines on two documents: on a Protocol of Agreement concluded between Member States in 1964 (Special Council of Ministers 1964) and a Council decision of 1967 regarding the policy for oil and natural gas. In the Protocol of Agreement, Member States asserted their aim to create a common energy policy in terms of a common commercial policy and the supply from third countries, address the management of state subsidies, and issues of competition based on different fuels. The guidelines emphasise the serious “obstacles to trade within the Community as regards energy products” (European Commission 1968: 5) and the need to counterbalance the excessive risks arising from the great dependence of the Member States on “imports and from insufficient diversification of the sources of supply” (ibid.: 6).

The guidelines also contained specific proposals which fell into three categories: the establishment of a framework for action and a policy addressing measures in the case of the interruption of energy supplies, measures to create a common market, and the creation of a policy for obtaining cheap and secure supplies (European Commission 1968). The proposals, understood here as *intended goals*, were ambitious in their conceptualisation, as they addressed different levels of energy policy and a

common market. However, in the end the Council could only agree on a general set of principles (Duffield & Birchfield 2011). The lack of progress can be attributed to the design of the institution. It was not until November 1969 that the Council met to discuss the guidelines – almost three years after the Executives had merged. Fundamental principles were agreed by the Member States, however, none of the proposals the Commission had sent to the Council – part of a “policy of little steps” (Lucas 1977: 50) - were approved at the end of 1971 (ibid.). Thus, the evidence once again suggests that only a minimum of the intended goals were addressed in the final policy output, corroborating the claim that institutional evolution was starkly obstructed by the institutional framework.

The only proposal that materialised during this period was the Directive 68/414/EEC, implementing an obligation for Member States to maintain minimum stocks of crude oil and/or petroleum products, “at least 65 days average daily internal consumption in the preceding calendar year” (Council of the European Communities 1968: 586). Although measures to align different Member State’s energy policies to create rules for a common market / ensure the security of supply were on the table, in the early 1970s, the Communities saw again a resistance to instigate a common European energy policy. Policy measures and legal provisions materialised only with limited capacity to effectively regulate energy markets and provide supply security. In 1972, the directive from 1968 to mandatorily store a minimum of oil stocks was updated and increased from 65 to 90 days (Council of the European Communities 1972). The increase in stocks was to be carried out as soon as possible, however, not later than 1 January 1975 (ibid.).

A subsequent step was Directive 73/238/EEC to provide the competent authorities in the Communities with the necessary powers in an emergency situation caused by a supply disruption. The powers conferred entailed the following: to draw on emergency stocks; to impose specific or broad restrictions on consumption; to give priority to supplies of petroleum products

to certain groups of users; and to regulate prices in order to prevent abnormal price rises (Council of the European Communities 1973). In addition, the Commission made further proposals for more 'little steps' – without any progress being made. Even those measures that were agreed upon had their roots in initiatives instigated years before, and therefore just required a minimal amount of political will (Lucas 1977). Apart from the necessary commitments, no vision of further institutional endowment materialised - the institution was heavily locked-in. The implemented policy measures in the case of a supply disruption represented the absolute bare minimum of political will conferred to the institution. As Lucas (1977) explains,

> "[t]he lack of any interest in energy policy from the member states is certainly the most striking aspect of this period. […] (D)iscussion of energy was desultory and there was no determination to reach agreement. […] There was, in fact, agreement in principle on many of these proposals, but there was no determination to solve the secondary problems that they threw up. […] The reason for the lack of determination was not so much that the proposals would have harmed the interests of member states, but much more that no member state felt it had anything to gain from the proposals, and therefore no government made an effort to have them agreed" (ibid.: 51).

In this case, as we can see, the notion of rationality considering Member State's policy choices (their preferences) is very strong. Member States' interest was to keep energy policy a sovereign issue with little involvement on the part of the Commission. Poor institutional performance can be attributed to the lack of political will and the institutional design. Member States perceived no economic benefit of a common energy policy based on rational choices, and a lack of leadership from the Commission was apparent due structural constraints. By 1972, and five years after the merger, energy policy was not further integrated and lacked effective policy tools. At this point we must recall that the formal competences of the EEC addressed only coal and nuclear energy, both diminishing in their importance (Matlary 1997), and hence, oil and

gas was subject to unanimous voting in the EEC. Therefore, the institutional trajectory was fundamentally rigid and secondary legislation was very hard to alter. New wide-ranging provisions, apart from the rather tenuous provisions on oil stocks and emergency measures, were almost impossible to trigger. Even though the shortcomings of energy policy were highly salient, policy makers and the different preferences of the Member States hindered the development of a common policy. Moreover, provisions concerning a common market / ensuring the security of supply were not addressed via primary legislation. Therefore, the institution could not be altered and national energy policies were conceived as the appropriate means to ensure the supply of energy.

In 1972, the Commission published a communication called “Necessary progress in Community energy policy” (European Commission 1972c), which built on the “First guidelines for a Community energy policy” (European Commission 1968). Specific factors emphasised by the Commission in the document, were contributing to changes in the context of energy policy and on the world energy scene. They included: the changing attitude of exporting countries to a more assertive role regarding their price policy; thus, creating a seller’s market and resulting in changed costs (this means that oil producers were in a position to determine unilaterally questions of price and supply); a nascent debate on how to improve the quality of life, which found a first practical expression in a discourse about environmental protection; the upcoming enlargement of the Community, “which will have the effect of altering both the pattern of the energy sector and *ideas* on energy policy” (ibid.: 5). The memorandum furthermore clarified that the role of the public authorities on the Community energy markets should be strengthened. However, the term ‘public authorities’ was ambiguously formulated and could, depending on the interpretation of the Member States, refer to either themselves or to the Commission.

Clearly, the proposal again set forth ambitious *intended goals* and a couple of specific measures to tackle issues associated with each individual sector (oil, natural gas, coal, electricity, and nuclear energy). However, despite attempts by the Communities to instigate renewed impetus for a comprehensive energy policy, they did not achieve the desired results and the lack of *policy output* prevailed. Much like its predecessor from 1968, the set of proposals did not generate more enthusiasm among Member States. France in particular was not keen to cede powers to the supranational institutions and tried to restrict the Commission's role in developing any energy policy. A fact, that was exacerbated after the accession of the UK who supported France's attitude in terms of limiting the powers of the Commission (McGowan 2011).

In addition, the Commission published a communication in 1972 that was based on a comprehensive analysis of the demand side along with a predicted future supply situation of primary energy sources, to identify available policy options. In the 1960s, "[o}il was available in virtually unlimited quantities and at relatively low prices, and covered most of the new demand which arose" (European Commission 1972b). Gas gained some turf in the overall energy demand, the demand for coal decreased further, and nuclear energy was side-lined due to much cheaper conventional energy. Almost like a pre-emption of the approaching oil crisis in 1973, the Commission warned that oil producers have become aware of the advantage they have on a sellers' market, and that they were seeking to intervene more directly in the management of their resources. The Commission therefore proposed certain means to tackle long-term energy security. The list of issues almost reads like a policy proposal for the 2014 Energy Union: a rational utilisation of energy to reduce the pressure on the market; the diversification of sources of supply to increase both short- and long-term security; and the creation of a stable energy market to ensure a regular and sufficient supply of energy at the lowest possible cost (ibid.).

3.4.1. The first oil shock

The oil crisis of 1973/74 hit the European Communities hard and can be seen as the severest event that had affected the European Communities until then. It serves as valuable evidence for further investigation. From a HI perspective, exogenous events like the oil crisis, might punctuate the institutional trajectory in a way prompting the institution to change its path and initiate amendments to the institutional framework and its rules. This creates two main questions that warrant further investigation. Firstly, did the crisis initiate the institution to change its path and, hence, deploy enough momentum to be classified as a critical juncture? Secondly, if it did not fulfil this premise, what reasons can be identified for why the crisis did not provide the necessary momentum to change the institution, despite its severity for energy markets and the economy? The oil crisis of 1973/74 is thus a good case to assess under what conditions exogenous events instigate critical junctures.

The crisis occurred due to the Egyptian and Syrian invasion of Israel, during which Israel managed to push back the invasion with the help of Europe and the US. As a response, the oil-producing countries, organised through the OPEC, instigated an oil embargo on 16 October 1973, which meant that they cut the production of crude oil and began to increase the price of oil. The embargo targeted the US, the Netherlands, and partially Denmark (European Community Information Service 1974). The Netherlands had allowed the US to use its territory and airlift military equipment to Israel. In addition, the Netherlands provided Israel with oil during the war (Schubert et al. 2016). The Dutch in return, looked for support from their fellow Member States without much success. The French and the British did not promote solidarity; especially the British endorsed a stance to not aggravate OPEC (McGowan 2011) due to domestic interests. France and Britain joined the Arab blockade of the Netherlands. The Dutch invoked the Treaty of Rome, pointing to the fact that commodities had to move freely within the Community. However, France sided with the Arab oil producers, stating that they were free to choose whom

to sell to. Both the British and the French declared their approach to the Middle Eastern conflict was one of neutrality and, as a consequence, the Arab oil producers classified both as friendly countries. Europe was facing two serious problems: firstly, its stark dependence on Middle Eastern oil; and secondly, that there was neither the will nor the institutions for united action in the face of a crisis. The crisis showed "the unacceptably high cost of disunity" (Laqueur 1974). The price of oil per barrel first almost doubled, then quadrupled, leading to a price increase from three to five USD, and over the course of 1974 to more than twelve USD (Schubert et al. 2016).

Although the oil crisis might have created hope that it could reignite a debate on feasible policy options to create a comprehensive energy policy, this was unfortunately not the case. At the Copenhagen summit in December 1973, where measures to tackle the crisis were discussed, a common response by Member States was blocked due to disagreements between Germany and Britain over the funding of regional policy (ibid.). Intergovernmental bargaining was characterised by choices derived from Member States' individual preferences to maximise utility and attain their respective goals. The Copenhagen Summit did not provide a solution to the grave situation the oil crisis evoked; rather it emphasised that Europe was facing a serious crisis, that it was split between different interests, and that it did not have the capacity to instigate common action (Laqueur 1974). Based on self-interested calculations and utilitarian considerations, Britain and France believed that if they adhered to the wishes of the oil producing countries, a steady and cheap supply of oil could be maintained and they would get better deals than the other European countries (ibid.). On 18 March 1974, OPEC decided in Vienna to lift the embargo and step up the production but left the price of oil unaltered. As EC Commissioner Ralf Dahrendorf put it in early 1974, "(n)ever before have the clouds lowered so menacingly over Europe as now" (European Community Information Service 1974: 1). Consequently, the skyrocketing oil prices led to a decrease in economic growth by 1,5% and an increase in the general price level by 3%. To show the far-reaching implications of the energy crisis, the

following economic sectors suffered most from the slow-down of economic growth: chemicals and plastic industries, building and construction, textiles, cement, glass, ceramics, tourism, trade and other services, rubber and motor vehicle construction. In addition, the crisis also had an impact on employment, and on the payment balances and the monetary reserves (European Commission 1974). This highlights the interconnection of the energy sector with other policy areas and the whole economy of the Communities, which were also affected by the crisis.

In the midst of the crisis, the Commission published a communication in June 1974 named *Towards a new energy policy strategy for the European Community*. The communication was full of concern about energy security and hence,

> "[v]igorous action must be taken in order both to guarantee greater security of supply and to prevent violent' changes in the prices of energy materials, which always prejudice the effectiveness of investments undertaken and call into question the wisdom of the path economic development has followed" (European Commission 1974: 1).

The Commission was not only concerned about the implications of the oil price increase for energy policy in general, but also about the repercussions it had for the adaptation of economic structures and the institutional matrix. As already mentioned, the crisis would bring about a deterioration in the balance of payments, and as an immediate consequence, the external debt of the Community would increase (ibid.). Intriguingly, as Buchan & Keay (2015) emphasise, the Commission also proposed an absolute institutional innovation: the creation of a Community agency, with its own legal personality and financial resources. This agency should have been the institutional body assigned with the planning of energy supplies and infrastructure. A daring and courageous undertaking, based on the severe economic conditions the European Community found itself in. As one might already assume, from the empirical evidence already examined, the proposal vanished without a trace.

Since then, the Commission has never dared to propose a European energy agency of this scope, not even in the context of the Energy Union.

The evidence suggests that an institution must be endowed with the institutional capacity to react to exogenous factors / threats. In the absence of such institutional competences, and if a specific sector is not integrated into the institutional matrix, no effective responses can be triggered. As competences lie outside of the institutional remit, no mitigation measures can be deployed to preclude or reduce external threats. Member States reacted to the oil crisis with bilateral agreements, based on their respective set of preferences, with Arab suppliers, who awarded them contingent on Member States' stance towards the Arab-Israeli question. Here, the notion of rationality is particularly strong; the locked-in institution was not able to resolve the problem and rational decision-making influenced intergovernmental bargaining. Despite high hopes associated with the oil stock obligation of 1968 (the subsequent Council Directive from 1972 was not in force yet) and expectations of solidarity, the nine Member States opted for individual solutions (Schubert et al. 2016). OPEC's strategy could be best summed up as one that sought to divide and rule – which worked perfectly in the EC (Matlary 1997). It was only after this that US Secretary of State Henry Kissinger united most of the West European countries to establish a common front by creating an emergency oil-sharing mechanism, further delaying any common initiative within the Communities (ibid.). Not to mention that the involvement of the US – to form a consumer's cartel as a response to the measures taken by the producer's cartel - complicated the OPEC crisis still further (George 1996). As a result, and in line with Gaullist foreign policy objectives, the French government did not follow the measures initiated by the US, and subsequently did not join the International Energy Agency (IEA) – the consumer's cartel. The idea behind the IEA was not new. Kissinger suggested founding an 'Energy NATO', an international organisation within the framework of the Organisation of Economic Coordination and Development (OECD) (Schubert et al. 2016). However, "[t]his produced a split within the Community which made an energy

policy impossible to achieve" (George 1996.: 163). The attempts by the Commission to involve France in oil-sharing and research activities on alternative energy resources were hampered by France's resistance to joining the IEA. France decided to do so in order to signpost some sort of 'Communitarian virtue' – something that was not received well by other Member States (ibid.).

In addition, Directive 73/238/EEC of July 1973, on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products, did not create a solution on a Community level. It conferred powers in the case of a supply shortage to "competent authorities" (Council of the European Communities 1973: 1) at a Member State level. Moreover, "Member States shall appoint the bodies to be responsible for implementing the measures to be taken in execution of the powers provided for" (ibid.: 2), thus, underlining that national programmes were preferred over European ones, during and after the crisis. It took another four years to confer minimum competences to the Commission, in case of a supply disruption. Based on the aforementioned directive, and the obligation to maintain minimum stocks of crude oil and/or petroleum products (Directive 72/425/EEC), Council Decision 77/706/EEC allowed the Commission to "set a target for reducing consumption of petroleum products in the Community as a whole by up to 10 % of normal consumption" (Council of the European Communities 1977b:1), after consulting expert groups from the Member States.

The Council would subsequently have to decide by qualified majority on the proposals concerning reduction targets by the Commission (ibid.) - a minor success, given the Community's relentless efforts to comprehensively integrate energy policy for 20 years. However, the decision still endorsed a strong sovereign component as the expert groups, who should consult the Commission about the appropriate measures to be taken in the case of a supply shortage, were recruited from the different Member States. Interestingly, it took the Commission another one and a half years, until June

1979, to come up with detailed rules for the implementation of the Council Decision (European Commission 1979c), which happened to be during the second oil shock of 1979. This time, the oil crisis was caused by the Iranian Revolution and the subsequent Iran-Iraq war. Once again, diminished oil supplies dramatically and increased the world price of crude oil (European Commission 1979a).

As we can see, only insignificant progress was made to consolidate European energy policy; the institution was locked-in and unable to alter its institutional trajectory, which was agreed upon more than 20 years earlier. From an HI perspective, early decision can have a huge impact on later decisions as they entrench the predominant rules deeper into the institution. Again, we have to recall that, at this time, any oil related policy was subject to a unanimous vote in the Council. This supports the first hypothesis, that policy making was severely hampered by the voting system, and that the most rigid form of institutional inertia caused a total lock in of the institution. Energy policy at this time provides strong evidence to support the assertion that in the absence of qualified majority voting in an institution, institutional development is severely hampered. However, one important question remains unanswered. Why did the oil crisis, which represented a serious threat to the European Communities, not constitute a critical juncture / formative moment for energy policy making and was not a catalyst for the creation of primary law or the amendment of secondary law? Why did the crisis not instigate institutional change?

An explanation that is based on the premise of self-interested utility maximisation of the different Member States regarding their preferences, may be able to provide a plausible answer. A later communication from the Commission points to causes for Member State's action that are reasoned on the grounds of the self-interested behaviour, and that are, in this case, closely linked to the notion of 'high politics'. The documents state that,

> "[i]t is because adequate and reasonably-priced energy supplies are so fundamental to the functioning of the economy and to the stability of

> society that energy questions in time of actual or threatened difficulty become charged with the highest political significance both domestically and in the field of foreign relations" (European Commission 1979a).

The evidence suggests that both exogenous *and* endogenous factors must be present to amend primary legislation and to count as a critical juncture, as was the case for the inception of the ECSC. In this case both factors were present. In the case of the oil crisis, exogenous factors were present, however, endogenous momentum was not given due to the diverging preferences of actors. Therefore, in times of an (energy) crisis, and when significant exogenous factors impact the institution, if the policy area concerned can be found in the intergovernmental sphere, institutional rules will not, or only minimally, be altered. To be able to amend secondary provisions, and to enhance the possibility to find a common solution to a problem on a supranational level, certain competences must be transferred to the institution in advance and enshrined in primary law as a prerequisite. Otherwise, the exogenous event will not have an impact on the supranational institution, but rather influence the regulatory framework of the different Member States on a national level. The crisis certainly did have a big impact on the institutions that governed energy policy on the national level; consequently, each Member State reacted differently. However, the impact of the exogenous threat did not change the institutional trajectory at the Community level. Oil was not governed by the EEC, hence, no institutional 'matter' or 'substance' in the form of secondary legal provisions could be altered. In order to influence the associated rules, and to change the path of the institution, the institution must be endowed with competences in the first place. When sectors fall outside the remit of the institution, and are not embraced by the institutional framework, actors will resort to unilateral measures on a national level.

Suboptimal outcomes were the result of the energy crisis and laid bare the Community's ineptitude to swiftly react to exigent events and effectively regulate specific areas of the polity which lay outside of the Union's

competence. Moreover, crises like the energy crisis of 1973 constitute events that lead to a deep running uncertainty about, and distrust in, the capacity of the Community to tackle serious situations in order to maintain and ensure the well-being of its citizens. The approach to problem solving and decision-making, as exemplified by the actions of Member States, is one that suggests that under severe conditions, and based on an intergovernmental rationale, a 'me first!' attitude in the event of an exogenous shock serves as the common rationale for Member States – at least for those whose preferences are not aligned with the *intended goals* of the institution. Even if Member States are integrated in other policy areas and are embedded into the institutional matrix, if the sector is on an intergovernmental level and penetrated by an exogenous event, national solutions will dominate decision-making in the institution.

3.4.2. The Institution after the crisis

In 1974, the Commission once again proposed measures to create a Community energy policy (Council of the European Communities 1974a). The resolution stated that there was an urgent need for a Community energy policy, as acknowledged at the Copenhagen Summit, due to the shifting structural conditions on the world energy markets. It suggested the reduction of energy demand, improvement of energy security based on the development of nuclear power, further exploration of the Community's own hydrocarbon and solid fuels resources, diversification of energy supplies, and measures to ensure research and development efforts. In addition, environmental protection should be considered in both the production and consumption of energy (Council of the European Communities 1974a). As required in the resolution, the Council met again in December 1974 to "work out and implement a common energy policy as quickly as possible" (Council of the European Communities 1974b).

The meeting resulted in the Council resolution ‘concerning Community energy policy objectives for 1985’, providing a new set of *intended goals*. According to the forecasts, the Community’s level of dependence on imported energy would reach 50 % by 1985. As imported energy accounted for 63 % in 1973, the Council approved the objective to reach this goal and, if possible, even reduce it further to 40 % by 1985. The document specifically emphasised that the more ambitious goal of 40 % should take priority and that the Council request that the Community institutions constantly review the progress made to achieve this objective (ibid.). From an HI perspective, constant monitoring of the *policy outcome* contributes to feedback processes and increasing returns; assessing the effectiveness of the *policy output* is an indispensable part of the policy cycle – monitoring determines whether provisions are sufficiently applied by Member States, or whether stricter application is necessary to reach the predefined *intended goals*.

The resolution stated that the Community’s growth rate in total energy consumption should be curbed by 15 % in 1985, compared with 1973; coal production should be maintained if economically feasible (180 Mtoe by 1985); the Community’s research and production of natural gas should be sped up, whereas 95-115 Mtoe should be secured from third countries; 160 GWe (Gigawatt electrical), and if possible, 200 GWe of electricity should be provided by nuclear energy (whereas electricity should cover 35 % of energy consumption by 1985); hydro-electric and geothermic power plants should raise their contributions to 45 Mtoe; oil consumption should be restricted as much as possible and where feasible, replaced by other energy sources; research and Community production of oil should be stepped up (to 180 Mtoe by 1985); and imports from third countries should be cut back from 640 Mtoe in 1973 to 540 Mtoe in 1985, which translated into reducing the share of imported oil in the total energy requirements from 61 % in 1973 to 38 % in 1985 (Council of the European Communities 1974b).

As one can see, the proposal set forth ambitious and clearly defined *intended goals* to tackle challenges in the aftermath of the Arab oil crisis. Shortly thereafter, in February 1975, the Council underpinned its willingness to support the development of a Community energy policy. The objectives as laid out in the resolution of December 1974 required the "implementation of appropriate measures at Community level as well as by each Member State" (Council of the European Communities 1975: 1). The Council therefore invited "the Commission to periodically recommend long-term guidelines on energy for the pursuit of these objectives, covering in particular any type of investment which such activities may involve. Such guidelines (were) to help Member States to take the appropriate decisions" (ibid.). The resolution also stated that for hydrocarbons, exchanges of information and concerted action between public authorities, and consultations between public authorities and industry, should be facilitated – and when necessary, the means to act should be provided. From an HI perspective, the exchange of information contributes to learning effects as it creates transparency and a more level playing field. Hence, it creates adaptive expectations and improves the conditions for policy alignment between the various stakeholders. Moreover, the Council agreed to review whether Community rules should be laid out in the event of supply difficulties, to ensure the balanced supply of the energy market "and the maintenance of its unity in observance of the provisions of the Treaty" (ibid.). However, as one can see, the wording is rather vague and leaves room for broad interpretation. As was the case with previous documentation (for instance, see European Commission 1972c), the term 'public authorities' could be interpreted in various ways and political actors on the national or supranational level could be meant.

No big changes materialised as a result of these ambitious proposals. The main obstacle to a Community-wide energy policy was Britain, who joined the EEC in 1973 (together with Denmark and Ireland) and who was committed to keeping energy policy at a national level and vetoed deeper integration. The UK enjoyed a surplus of energy resources, producing more than it consumed,

which constituted a novelty amongst the other Member States. The UK had abundant resources of coal, oil and gas. When coal production declined between the late 1960s and 1970s, the country stepped up its oil and gas production. The discovery of large reserves off the British coast (in the North Sea), meant the UK could meet most of its energy demands for both oil and gas – although Britain continued to import crude oil and petroleum products (McGowan 2011). This development was exemplified in 1974 when the British Secretary of Energy stated that the UK had little to gain from any common European energy policy, thus, underling that Britain preferred a national approach over a Community policy, based on a self-interested set of preferences.

From a HI standpoint, the slow development of a common approach to energy at this time can be explain as follows. Although the Commission relentlessly tried to instigate a Community approach to create a level playing field for all Member States, the development was hampered by the veto powers of Member States. Scharpf's joint decision trap is hence fully corroborated based on the requirement to unanimously agree on secondary provisions. The high institutional stickiness (the institutional 'lock-in') creates high countervailing pressures to change, and prevents the institution from changing at all in the absence of a catalytic event like a critical juncture. Even though the Council agreed on a specific set of *intended goals*, as laid out in the Council resolution of December 1974 (Council of the European Communities 1974b), in the end, Member State's resistance prevented the Community to develop a coherent stance.

The UK, in particular, became a key veto player in energy policy reasoned through its predominant position as one of Europe's main producers. In order to defend its interest to shield the North Sea oil and gas reserves from foreign influence, Britain protected its national champions like British Petroleum and sought that Community-wide policies do not weaken their position on the energy markets (Ciambra & Solorio: 2015). British energy policy was based on

a strong concern for supply security and “broader energy objectives” (McGowan 1996: 5). The government had direct influence on the energy sector which was based on the purchase of shares that would later become British Petroleum and the establishment of a corporation managing the electricity grid (ibid.). In the aftermath of the oil crisis, the UK used its (veto) powers to selectively leverage and hamper any further advancement of the EEC energy agenda. “In a context in which the Commission still lacked any resources and formal power in this policy field and France agreed to undermine the scope of a collective response by the Community, the United Kingdom effectively managed to phase out any sensible advance in energy policy from the formal agenda” (Ciambra & Solorio: 2015). The British government constantly intervened in energy markets and affairs to protect their own interests and preferences: to attain the goals of reconstruction and to develop new technologies and resources.

An additional dampener for the development of a comprehensive energy policy was France’s protectionist stance towards a Community policy, much alike the UK’s. The reason for the reluctance to shift powers to the supranational level can be found in France’s development of energy policy that followed a similar historical development like the UK’s: France had a long tradition in participating in the oil sector, the energy sector in France was nationalised after the Second World War and public firms were subsequently utilised to attain energy policy objectives. Both the Ministry of Industry and Finance were responsible for energy policy, the former for strategic development of the sector and the latter for financing, investment and pricing (McGowan 1996).

3.4.3. Assessing a locked-in institution

As demonstrated, national interests dominated policy making in the Communities in the 1960s and 1970s. As has been shown, many proposals were ‘bogged down’ by some Member States’ aspirations to keep energy

policy in the national domain. Moreover, when the Community faced threats to their energy supply based on the oil crisis, no solidarity and unity was shown at the Community level; ideational factors did not play role in the institutional context which was characterised by the self-interested rationality of Member States. The institution was locked-in and policy development was reduced to an absolute minimum.

The institutional lock-in – as a consequence of high institutional stickiness - is reasoned through Scharpf's joint decision trap, and measured with the help of the proxy variable of the voting system. If unanimous voting was the decision rule, the policy area proved almost impossible to change and the process of further integration was impaired. The institution stayed rigidly on its path based on, and reasoned through, the requirement of a unanimous vote to instigate change – the institution was locked-in on a specific institutional trajectory which was decided on during the phase of inception. Even incremental change was reduced to a very low degree, and almost absent, as feedback mechanisms were hampered from the onset. To recall Scharpf's argument, the "pathologies of substantive public policy" are based on two institutional conditions: "first, the fact that national governments are making European decisions and, second, that these decisions have to be unanimous" (Scharpf 1988: 267). In addition, and equally intriguing is the proposition that in an ongoing joint-decision system, in which unanimity applies, the 'default condition' of the institutional arrangement pre-empts institutional development if an agreement is not achieved. This means that in an event of non-agreement the *continuation* of existing policies entrenches actors and creates the adverse condition that they must stick to the institutional commitments even in the event of sub-optimal outcomes.

From an HI perspective, key to institutional development are feedback mechanisms and increasing returns, which create incremental steps and change. Far-reaching changes are only instigated through critical junctures. However, the fundamental requirement for institutional development is

contingent on the prerequisite that actors need to share a common understanding of what functions the institutions should fulfil, enshrined in primary and secondary law. Moreover, decisions should be made without any of the actors having the option to veto during decision-making to unilaterally serve their own interests and hamper further advancement. Such assertions seem to be rather obvious, but when we look at the development of energy policy in the 1970s, the importance becomes clear. From the outset, proposals for legislation were on the table and *intended goals* were clearly defined all the time (e.g. High Authority 1964a; European Commission 1968; Council of the European Communities 1974b). Energy matters were a significant part of the political discourse in the Community as the decline of coal, the ascent of oil and gas, and the stark import dependence on third county suppliers lent substance to the necessity of a common approach (High Authority 1964b). Nevertheless, the biggest stumbling block was the fact that the Community had no competences in matters that surpassed policies that addressed coal and nuclear energy. “The community institutions were never given any explicit jurisdiction over oil and, later, natural gas, not to mention any general competence in the area of energy policy” (Duffield & Birchfield 2011: 3). The Community was trapped in a situation where high institutional stickiness made it impossible to alter the institution.

For institutions to make incremental change possible, competences must be conferred to the institution; actors must demonstrate a degree of political will to attain the intended goals by shifting powers to the institution during a critical juncture, thus creating the necessary primary law for an institutional framework that triggers feedback mechanisms. For instance, the agreement in 1951 to shift powers to the ECSC to govern all matters concerning coal created processes of increasing returns due to a robust institutional framework enshrined in primary law, large set-up and fixed costs, learning effects, coordination effects and adaptive expectations (Arthur 1994: 112). Competences were shifted to the supranational level from the onset, making development possible.

In the absence of such basic institutional settings that provide the capacity to incrementally change the trajectory, deeper integration (or any integration) is obstructed even if actors show a willingness from time to time to improve the regulatory framework. Veto players can lock-in the institution. The factor that obstructs the development of a starting point for change through secondary legislation is that, under such conditions, no common denominator can be found due to actors' divergent preferences on salient issues. Therefore, no path dependent mechanisms that allow for incremental change can be triggered. A point of departure must be agreed upon like the creation of the ECSC to govern coal and steel. If there is no such understanding, and if no competences are shifted to the supranational level, policy development is seriously hampered. Even if 'pro-forma' agreements exist among actors to solve institutional shortcomings, actors are too concerned to protect their own national interests. If a policy area can be found in the intergovernmental domain, and primary law does not provide the slightest capabilities to address policy making in the specific sector, the 'default condition', the status quo is almost endlessly perpetuated (with only some minor exceptions). In this case, adaptive expectations and coordination effects are not triggered and, due to the absence of increasing returns, different actors do not become 'bound' to the institution in a specific policy area.

Hence, based on the empirical evidence, the first hypothesis is corroborated: if no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. 'Small' critical events had no effect on the institution. Even when actors showed a degree of willingness to push for deeper integration, the institutional design pre-empts the possibility to reach agreement.

Therefore, based on a HI rationale, and further tested as a second hypothesis, this research project posits that a locked-in institution needs a critical juncture in order to instigate change in primary law. Due to the highest form of

institutional inertia, the institution was severely dysfunctional, not capable of correcting the institutional nuisances itself, and created suboptimal outcomes for all actors involved. As we recall, although the French and the British governments tried to escape the (socio-)economic 'avalanche' that the oil crisis initiated, in the end they eventually found themselves in the same boat with the other Member States - they had to bear the same high prices as other European countries. Along these lines, although France and Britain acted from a rational standpoint to absorb the price hike, in the end, the locked-in institution produced malign outcomes for them and all the other actors involved.

Chapter IV: A Critical Juncture

This research project will now test the second hypothesis which assumes that a locked-in institution needs a critical juncture in order to be jolted-out of the dysfunctional institutional path.

H2: If a critical juncture occurs within a setting of high institutional stickiness, moderate integration can be expected. Integration will occur in the form of a non-incremental change of primary legislation.

We will now turn to more evidence depicting a locked-in institution before assessing the events creating a critical juncture for the Communities. It took another two years before the Council resolution of December 1974 (Council of the European Communities 1974b), discussed in the previous chapter, materialised in concrete legislation. As the evidence suggests, energy policy-making in the Community was a slow and cumbersome process and was met with much resistance from Member States, due to their preference to keep energy policy at an intergovernmental level. In May 1976, the Council passed legislation to set up a Community procedure for information exchange and consultation, regarding the prices of crude oil and the principal petroleum products (Council of the European Communities 1976a). This was followed by a regulation concerning the communication of information on the state of the Community's energy supplies (Council of the European Communities 1976b). The regulation was implemented to ensure that the energy supply situation in the Community was made more transparent, to enable the adjustment of supply structures to changing market conditions, and to diminish the impact of possible supply challenges or disruptions. In addition, in February 1977 the Council passed a decision to regulate exports between Member States in the event of difficulties in the supply of crude oil and petroleum products. This measure was conceived to ensure that “the burden of deficits in supplies of oil and petroleum products must be fairly distributed among the Member States” (Council of the European Communities 1977a).

Britain remained a major obstacle to any attempts for deeper integration of energy policy in the Community. In October 1977, the UK refused to accept proposals for emergency measures to be taken in the event of a supply crisis, unless it was granted veto powers, to shield British national interests, if deemed necessary (George 1996). Another proposal by the Commission to reduce refinery capacity, which had substantially increased during the oil-boom, was also opposed on the grounds that Britain wanted no interference by the Community in its refinery capacity, in regard to North Sea oil production. A third proposal, made in October 1978, to fund joint exploration of oil within the Community, was also put to a halt, although Britain would have benefitted economically. From a rational choice perspective, since the other Member States did not consent to financing the increase in British resources without getting any returns on their investment, the proposal also did not result in any legal provisions (ibid.).

In addition to the impediment of Member States to find common ground, the Community also faced the challenge of attaining previously agreed targets. In 1974, the Community set targets for a common energy policy to be achieved by 1985 and the Member States' heads of government, who met in Paris on 9 - 10 December 1974, called upon the Community institutions to implement this policy "as quickly as possible" (Council of the European Communities 1974b: 1). However, in 1977 the Commission conceded that these aims could not be reached: nuclear power was still lagging and oil remained the dominant energy source. Moreover, although oil imports had reduced as a consequence of the oil crisis, they rose to the levels just before the Yom Kippur War of 1973. The Commission emphasised the need for solidarity, as a normative impetus among Member States, in order to effectively tackle energy problems. The Commission stated that,

> "[t]he necessities of our balance-of-payments and the loss of growth leave us no choice. We need: development of our own sources of

> energy, energy saving measures, solidarity of all members of the Community" (European Community Information Service 1977).

In June 1979, the Commission published a communication on the energy objectives of the Community for 1990. The Commission invited the Council to consider the new Community objectives with a "view to their early adoption" (European Commission 1979e: 5). The Commission emphasised that there were substantial differences between Member States' practical applications of the 1985 objectives (see Council of the European Communities 1974b). Energy saving programmes were different in scope and intensity. In most cases, the degree to which coal and nuclear energy was used to bring down oil dependency, in regard to electricity generation, was likely to be insufficient; and pricing policies did not ensure that consumer prices reflected long-term supply costs (European Commission 1979d). Again, following similar objectives to 1974, the Commission called for more intensive energy saving, more use of coal and nuclear energy, and an increase in the production of hydrocarbons (ibid.). In order to achieve the targets of limiting oil consumption in the Community, specific actions should be set to limit 1985 oil imports to their 1978 levels. In addition, the Commission invited the Council to urgently consider specific measures to achieve medium and long term energy policy goals, and review the development and implementation of "effective and convergent energy policies within the Community" (European Commission 1979e: 5). The Commission stressed the critical need for a comprehensive approach to the energy situation. Interestingly, the Commission also instigated the distribution of public information on energy problems. Moreover,

> "[t]here will be a permanent system for monitoring and ensuring the convergence of the Member States' policies in respect of these objectives. The Community could take appropriate steps to back up and supplement these efforts and to ensure greater coherence" (European Commission 1979d: 1a).

The Commission's undertaking to disperse information to the public and create a permanent monitoring system points to evidence that the Commission tried to instigate learning and positive feedback processes, based on adaptive expectations. As discussed in the theory section, Pierson (2000) clarifies that actors who engage in highly complex political environments are heavily biased regards how they filter information. Information that tends to confirm and reinforce the prevailing institutional trajectory will be incorporated, disconfirming information will get filtered out. Thus, social interpretations of complex political environments instigate network effects and adaptive expectations, as they are frequently shared with other actors and, thus, induce increasing returns. However, this research project proposes that the efforts of the Commission to instigate adaptive expectations and feedback processes - adaptive expectations are one of the reasons for positive feedback mechanisms (Pierson 2000: 258) - did not lead to the desired outcome. Due to the locked-in institutional framework, which substantially hampered all efforts to create processes of increasing returns, no learning effects (acquired knowledge leads to higher returns), coordination effects (benefits increase with the number of actors), or adaptive expectations (prospects about joint usage among actors reinforces a choice) were triggered.

It is proposed that path dependent processes, conceived as a form of institutional stickiness that is substantially lower than in the context of a locked-in institution, are heavily dependent on a framework that allows actors to reach decisions based on Qualified Majority Voting. An institution that displays low stickiness is nevertheless able to incrementally change its institutional trajectory, due to its capacity to be progressively altered - based on its voting system. Actors reach decisions more easily and veto players (as in the case of Britain and France) do not have a chance to block agreements. As all decisions concerning oil policies – which can be understood as the most important part of the energy mix at this time - were made by unanimous voting, no such path dependent processes could evolve. Table 6 shows that gross consumption of both oil and natural gas - where the Community did not hold

any competences either – accounted for almost three quarter of the total energy mix. Hence, the importance of hydrocarbons, and the locked-in institution that pre-empted undertakings in this domain, meant that the institutional trajectory was highly rigid and the institution itself was unable to initiate any processes of increasing returns.

Table 6. Shares of different fuels in the energy mix (1978 estimates)

1978 (estimates)

Million toe

	Domestic production	Net imports	Gross consumption(*)	(%)
solid fuels	172,8	25,6	203,2	21
oil	64,5	470,0	541,7	55
natural gas	135,1	30,8	163,4	17
nuclear energy	28,3	-	28,3	3
others	32,7	2,7	35,4	4
Total	433,4	527,1	972,0	100
%	46	54	100	-

(*) Variations in stocks explain any differences between the sum of the first two columns and the third.

Source: European Commission 1979d

4.0.1. The second oil shock

During the second oil crisis in 1979, triggered by the Iranian revolution and continued due to the Iran / Iraq war, the European Council discussed the global energy situation, which remained very serious. The difficulties arose in the first half of that year, due to the unforeseen interruption of oil supplies from Iran, coupled with a harsh winter and high energy demand. The need for a common approach was pressing, much as during and after the first oil embargo as a result of the Yom Kippur War. The Commission warned that,

> “[a]s recent events have shown, the Western public is extremely sensitive to the effects of even minor and temporary energy shortages. More fundamentally, the standards of public services and the level of business activity and hence employment can decline or remain at an unacceptably low level if the energy situation is such as to jeopardise world trade and economic growth. In these circumstances social tensions can appear or be exacerbated, and political and social norms can be challenged” (European Commission 1979a: 2).

In the first half of 1979, supplies to the Community were 3% short (nevertheless 6% higher than in 1978) – although net-imports of crude oil increased by 4% and domestic crude oil production by 40%. The shortfall was not evenly distributed between Member States. Oil prices rose to 18-23,5 dollars per barrel, which led to an average increase of 57% in the price of imported crude oil (ibid.). As energy prices increased, the security of supply and production were in jeopardy, and the structure of the world oil market changed fundamentally. The European Council emphasised the need to create greater stability in producing and consuming countries: “In the light of these needs the Community for its part must now develop a more effective energy policy” (European Commission 1979b:9).

Once again, the Community was urged to develop indigenous energy resources, in particular coal, nuclear and hydrocarbons, and to promote research and development with particular regard to renewable energy sources. However, no effective policies were implemented; the institution was in a deadlock and incapable of making decisions. On 9 June 1980, a Council Resolution concerning Community energy policy objectives for 1990 and convergence of the policies of the Member States was passed. Another important step leading to a comprehensive energy policy one would have hoped. However, the result was rather a drop in the ocean. The document, in total merely one and a half pages long, set out some basic guidelines: efforts to save energy and reduce oil consumption; a request for Member States to

submit their respective energy programmes annually up to 1990; and requesting the Commission to asses these programmes. In addition, the resolution indicated in one short paragraph that 70 - 75% of primary energy requirements for the production of electricity should be provided by means of solid fuels and nuclear energy (Council of the European Communities 1980). As Table 7 shows, the figure on nuclear energy was quite optimistic when comparing the estimate for 1978 with 1990. Given the knowledge within the Community about the *actual* share of nuclear energy in the energy mix - 25,5 million of tonnes of oil equivalent (mtoe) - and the slow advancement of nuclear power since the creation of Euratom, due to the associated high costs and demanding technological requirements, it is safe to say that the projected figure for 1990 exaggerated the capabilities of nuclear power generation at that time.

Table 7 Sources of electricity production, 1978-1990

Sources of electricity production, 1978-1990

A. in m toe

Country	1978 (1)				1990 (2)			
	Solid fuels	Oil	Nuclear energy	Other	Solid fuels (3)	Oil (3)	Nuclear energy (3)	Other
D	46.5	7.0	7.4	16.8	52.7	7.1	58.2	25.6
F	12,9	11.9	6.4	18.7	6.8	6.4	70.0	17.8
I	1.6	21.1	0.9	14.9	6.8	24.0	45.0	16.2
N	1.1	2.3	0.8	9.4	5.8	7.4	2.7	4.6
B	2.4	3.9	2.6	2.3	3.7/7.0	2.6/5.3	7.9	2.6
UK	45.3	13.1	7.1	2.2	58.0	15.0/17.0	20.0	3.0/1.0
IR	0.7	1.6	-	0.1	2.6	1.9	0.8	0.7
DK	2.9	2.2	-	-	4.0	0.7	3.4	-
EEC (3)	113.4 (4)	63.1	25.2	64.4	140/144 (4)(5)	65/70 (5)	208.0 (5)	70/68

Source: European Commission 1979d

On 12 - 13 June 1980, the European Council met in Venice to discuss international political questions regarding the situation in the Middle East. The

meeting was primarily concerned with the serious international situation and economic problems resulting from the energy crisis. A couple of months earlier, at the European Council meeting in Luxembourg, the Community had slid into a severe deadlock over Britain's contribution to the Community budget, although an agreement on energy would have been of "utmost importance" (European Commission 1980c: 10). The European Council meeting was considered a disappointment as not much progress was made regarding the pressing energy problem. As many observers have remarked, at the meeting in Venice, the European Council was forced to return to its original role of providing political stimulus and general guidelines, and leave the solution of economic and technical problems to the Council. A solution to the issue of Britain's contribution to the Community budget was found by the Council on 29 - 30 May 1980 (European Commission 1980a).

As one can see, energy policy was firmly in the grip of the Member States. The gap in their respective approaches to energy policy widened, and the institution continued to be locked-in. The Community faced the second oil crisis within six years, which can be understood as the second severe exogenous shock to the institution in a decade. Although the crisis represented another serious threat to the security of supply, the economy and the wellbeing of European citizens, Member States could not align their preferences to overcome their internal differences. One would have hoped that the European Council meeting would have generated endogenous momentum to eventually deploy institutional change. However, these hopes were shattered by the gridlock between the Member States.

Roy Jenkins, the president of the Commission urged for a thorough overhaul of Member States' approach towards the Community's energy policy, stating,

> "[t]he Commission firmly believes in the necessity of Community action other than dispersed action by the Member States. National responses to successive oil crises since 1973 have actually widened differences in the Community. I fear this will continue unless we can agree on a

> common framework of policy comprising energy prices and necessary additional investment. It is therefore important that the Council of Energy Ministers gives a thorough examination to all the elements in the Commission's proposal' of 20 March and concludes its work before the end of this year (European Commission 1980a: 12).

A year after the first recommendations were made by the Commission in 1979, no common solution had been found to tackle energy problems caused by the suspension of oil imports from Iran and Iraq, let alone the implementation of a comprehensive European energy policy for the Communities. By late 1980, the Council was in the process of reviewing a communication by the Commission, sent on 10 November 1980, addressing a more flexible approach regarding the supply of oil. The provision would have been within the regulatory framework of Directive 73/238/EEC – the measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products (Council of the European Communities 1973) - which was already in force, in order to prepare the EEC for the following months. It set out a range of possible policy instruments, for instance: measures to discourage oil companies from making purchases at excessive prices; a reduction of demand; a stock management policy; efforts to increase the Communities own production; coordinated oil sharing at Community level; and price policies (European Commission 1980b).

None of the ambitious proposals striving for a common and coherent energy policy materialised into concrete legislation, apart from the sectors in which the Community already had competence. By 1982, the Community only managed to publish new secondary provisions concerning nuclear energy, coal, energy savings, provisions concerning petroleum products were kept to a minimum and only addressed registration procedures and the exchange of information for imports[3]. These can be understood as minor and rather tenuous

[3] For instance, see: Council Resolution of 18 February 1980 on fast breeder reactors; Medium-term guidelines for technical coal research; Council Decision of 28 April 1981 adopting a programme of research and development for the European Atomic Energy Community; Council Recommendation of 28 July 1982 concerning the encouragement of investment in the

developments, given the envisioned scope and depth of a coherent and comprehensive European approach formulated in the numerous proposals in the decades before. Above all, it is baffling that despite both crises in 1973 and 1979, which had such severe repercussions for the Communities on a (socio-)economic level, did not provide an impetus for significant institutional change; one would expect that such severe exogenous shocks would have acted as a catalyst. Again, the question to be answered is: why did both shocks not punctuate the trajectory of the Communities and instigate fundamental change in policy regarding hydrocarbons or measures to reconcile the policy field as a whole?

As outlined in the section on the first oil embargo, the exogenous shock initiated by the oil shortage did not affect the institution, and the corresponding legislation on energy policy, as the institutional rules under concern were not part of the overarching institutional framework; rules concerning oil and gas were still subject to unanimous voting in the Council and severely defended by Member States' interest in keeping these sectors under sovereign control. The evidence suggests that, even if Member States shared some common understanding of how a Community energy policy could look, the design of the institution forestalled any alterations. The obstacle to reaching agreement over the scope and depth of a common energy policy, in the form of high institutional stickiness, measured through the proxy variable of the voting system, made it impossible to alter the institution.

As previously stated, the evidence suggests that institutions can only react to exogenous events when competences, which might enable the mitigation of the external shock, are transferred from the Member States to the institutional level. As there were no rules in place, and only minimum agreement about the set of rules governing the institution, both exogenous events did not impact the

rational use of energy; Council Regulation (EEC) No 481/81 of 24 February 1981 introducing registration for crude oil and petroleum product imports in the Community; and Commission Regulation (EEC) No 301/82 of 9 February 1982 regards the communication to the Commission of information concerning crude oil or petroleum product imports.

institution. One could argue that, due to the economic severity of the crises and the repercussions for production and the whole economy of the Community, momentum could have been created that could have spilled over into the energy sector (see Haas 1958). However, this argument does not hold as Member States regarded oil a sovereign issue, something they would not want to be regulated by the institution. This suggests that if a specific sector of the institution is solely defined by a minimum set of rules, and if those rules and associated decision-making is in the hands of Member States, exogenous events cannot contribute to the alteration of secondary legislation.

Moreover, agency is needed to shift powers to an institution, and this shift must be cemented into the institutional design via primary legislation. Actors must make a conscious decision to confer powers to the institution from the outset. These powers must be woven into the institutional fabric in the form of primary law. Regarding energy policy, this is very much the case when we look at the coal and nuclear policies of the Community (ECSC and Euratom). A decision was made upfront to bestow the Community with powers regarding coal policies and nuclear energy, thus, in these areas the institution was not as rigid as one that is locked-in. Once powers had been conferred to the supranational level, structural forces began to unfold and actors become entrenched in the institution. This was the moment when path dependent processes unfolded their full potential.

Based on this logic, one can assume that under such circumstances, and when exogenous events occur, they have a much larger impact on the institution and can alter the institutional trajectory in form of amendments to secondary law. Chapter V and VI will substantiate these claims with empirical evidence, as the EU was later bestowed with competences that could address energy policy in a more comprehensive way (for instance, through the internal market programme). Hence, the energy crises did punctuate the trajectory of coal and nuclear policies (for both sectors, many secondary provisions were implemented). However, the big problem was that those sectors were not as

important for the development of a common energy policy as the actors had hoped. As shown in Table 6 (p. 132), solid fuels accounted for 21% of total consumption and nuclear energy for only 3% [sic!]. Although policies regarding these sectors were altered, the impact was rather marginal and did not bring about a substantial change for energy policy.

In addition, as a consequence of a decade that saw two energy crises, the Community faced a problem regarding its identity and the ability to effectively govern the polity as a whole. Gaston Thorn, the president of the Commission expressed his concerns about the state of the Community. Not only did the crisis pose a serious threat to energy security and the economy, but the Community gradually slid into a crisis that affected the entire institution. He claimed that,

> "[t]he Member States are faced with a dire economic and social situation. So far we have failed to overcome the crisis and pull ourselves out of it. Nationalist attitudes are resurfacing and threatening Community solidarity. The achievements of the Community and the European ideal are in danger. The prevailing climate is one of doubt, disparagement and confusion. If we do not halt the downward slide soon, we shall lose control, and the whole European edifice will be swept away" (European Commission 1981a: 8).

No single proposal materialised into concrete legislation as a result of the crisis apart from the sectors in which the Community had competence. Despite the rather meagre output of the Community in the aftermath of the crisis, the Commission tried to instigate endogenous momentum. The Community was the world's largest oil importer, embedded in an international context that was very unstable and, hence, the Community needed to shield itself from further risks associated with possible supply price increases, to safeguard the European economy. The Community economy had been badly hit by the oil crisis in 1979, which caused the oil prices to double (European Commission 1981c). The Commission took the view that to diminish the Community's

vulnerability, steps needed to be taken on the demand side (via energy savings and the rational use of energy) and on the supply side (via the diversification of sources of supply). The success of these measures was to a great extent dependent on what was done externally (European Commission 1981b). The internal and the external dimension in energy policy are highly interwoven as imports affect the security of supply and the functioning of the internal energy market.

In 1981 the Commission published a communication on the 'Development of an Energy Strategy for Europe'. The communication emphasised that, although the two Council Resolutions of 1974 and 1980 had provided some basis for common objectives, such as the reduction in oil dependence and a broader diversification of energy supply, the implementation of an overall strategy, comprising of action by the Community, the Member States, producers and the consumers, had not occurred. In the document, the Commission highlighted the inadequacy and inconsistency of action undertaken by the actors concerned (European Commission 1981c). In order to achieve the *intended goals*, the communication stressed the need to ensure that more rapid progress was made towards improved consistency and coherence between Member States in regard to their respective energy policies. Interestingly, the Commission took a completely new approach, addressing energy matters in the Community. The communication laid out that concerted efforts did not necessarily need to translate into the centralisation of energy policy instruments, nor did it require uniformity in the diversification of supply – depending on the national circumstances (ibid.). The Commission enticed Member States with a proposal that left room for individual approaches on a national level, making Community-wide energy policy more attractive. Nevertheless, it was important for the Commission to underline the need for efforts to go beyond a mere expression of Member States' will to do so – as we saw in the 1970s. Each Member State's policy approach should reflect the willingness to pursue common objectives.

4.1. The Single European Act

Between 1981 and 1985 the Commission made a couple of proposals that addressed a common approach to energy policy. In 1983 oil prices fell, helping to recover the economic situation of the global markets and to ease the supply situation regarding hydrocarbons. The Council managed to adopt a regulation on the method of formulating natural gas prices and tariffs in the Community, which followed a similar recommendation adopted on 27 October 1981 on the fixing of electricity prices and tariffs (European Commission 1983a). Apart from these rare successes, the Council did not manage to make further progress in bringing together the different levels of energy policy and reconciling the preferences of Member States. Consequently, energy ministers met on 21 April 1983 and requested the Commission prepare a progress report on the energy strategy for the attainment of the Community's 1990s objectives and conceded that these undertakings were "a matter of the greatest importance" (ibid.: 45).

On 7 June, the Commission sent a communication to the Council, which was based on former proposals and objectives adopted on earlier occasions. It evaluated the progress made in realising the Community's energy objectives for 1990s (Council of the European Communities 1980), and outlined the changes needed to achieve these goals. The Commission's conclusion was that the policies adopted were not sufficient to attain the *intended goals*, mainly due to the lower oil prices in 1983, which had slowed the initial momentum of the energy strategy (European Commission 1983b). In fact, the Commission referred back to the meeting on 21 April and underlined that, while the Council had agreed concerning certain risks (for instance, issues associated with security of supply), the lack of progress regarding measures to create a comprehensive, Community-wide energy policy, reflected the doubts of some Member States about the value of Community action, as opposed to national measures (European Commission 1983c). The conclusion of the analysis confirmed the need to: provide incentives for investments in the efficient use

of energy; establish coherent pricing systems; increase efforts in research, development and demonstration projects; promote the use of solid fuels; extend nuclear programmes; increase the security of supplies of natural gas; and ensure a satisfactory level of compulsory stocks of crude oil and oil products.

Proposals like the aforementioned Community strategy of 1981 and 1983 were made throughout the 1980s. One can observe that the content and the issues that were addressed in the first 30 years of energy policy, could also be part of proposals for the Energy Union: energy security, solidarity and trust; a fully integrated European energy market; energy efficiency contributing to moderation of energy demand; and a focus on research, innovation and competitiveness (European Commission 2015a) were all issues within the energy domain that the Commission tried to improve in the 1970s and 1980s. Hence, the challenges and issues that contemporary proposals try to tackle were not new, but rather were components of the energy domain from the outset and can be conceptualised as recurring main motifs in energy policy. The reluctance of Member States to shift competences to the Community was the predominant and compelling force that locked the institution in, much as Scharpf's (1988) joint-decision trap proposes. In the early to mid 1980s, the Commission sent some proposals to the Council that could have initiated fresh endogenous momentum, "which the Council politely welcomed and subsequently ignored. Real progress was rare and difficult to identify" (Schubert et al. 2016).

Intriguingly, in line with HI assertions, the Commission was aware of different factors that would contribute to processes of increasing returns, especially in regards to network effects and adaptive learning. In the proposal of 1983 they listed factors that would enhance the Community dimension of the energy domain, especially in sectors where it was more economic and more effective to do so. Analysed from a HI perspective, such measures would have helped to set a stable institutional path leading towards deeper integration, based on

incremental steps. For instance, taking advantage of economies of scale, such as pooling scientific and financial resources in research and development, would have pre-empt the duplication of often heavy expenditures associated with R & D. In addition, economies of scale would have improved the Community's financial instruments to borrow under the most favourable market conditions (European Commission 1983c). Learning effects would have been addressed through efforts to pool knowledge and experience, both of energy technologies and systems, and of policy measures in specific sectors. As suggested by an HI framework, learning effects among different actors once initiated, improve the efficiency of the institutional framework and, as contractual agreements with other institutions are made, coordination between actors increase and expectations about future events lead to stability in the system (North 1990: 95). Community programmes, as envisioned by the Commission, should have provided a framework for a fast and efficient dissemination of knowledge and outcomes of programmes to develop energy technologies and techniques. Such community programmes should also have drawn on experience and best practice regarding energy policies in different Member States and been available for the Community as a whole. Hence, all Community members would have gained from undertakings regarding the pooling of knowledge and benefitted from the experience of others and the evaluation of already implemented policies.

Another important step was the vision to expand the scope of the internal market in energy products. Community programmes should encourage energy price transparency, eliminate distorting factors and promote a more uniform approach toward energy taxation. Additionally, norms and standards should be harmonised regarding energy-consuming equipment and pollution control (European Commission 1983c). From an HI standpoint, the assertion to address norms and standards in energy policy pointed to the Commission's endeavour to create ideational momentum regarding the envisioned institutional trajectory. How can such behaviour be explained? Institutions provide moral and cognitive templates, allowing for individual construction of

possible action (Hall & Taylor 1996). The actors are deeply embedded in these institutions, which transport norms, values, symbols and scripts, and these ideational factors create filters for interpretation and define possible action. Actors gauge not only the situations but also assess *themselves* and their actions within a given context. Institutions provide strategically useful information about possible choices *and* they shape the identities, self-images and preferences of actors (ibid.). On the one hand, the Commission is the 'consciousness' (also in a normative sense) and policy vanguard of the institution who constantly strives to formulate policy in-line with the overarching Community interest. On the other hand, the Commission acts like a broker between the interest of Member States (or between competing sectoral interests), and builds consensus between the different actors (Padgett 1992). The interest to decrease pollution levels and to implement environmental policies in order to address issues of sustainability is evidence for the Commission's role as a normative policy vanguard. Promoting sustainability in various policy areas is an overarching goal of the Community that certainly deploys a strong ideational notion, and the Commission tried to embed such normative components into the institutional matrix.

In addition, the Commission endorsed a more integrated infrastructure that would enhance the flexibility of the energy supply. From a HI perspective, the development of infrastructure starkly contributes to processes of path dependence as the creation of infrastructure not only enhances capabilities in terms of trading energy products in the Communities, but also *physically binds* the actors to each other. Hence, as actors become part of an interconnected energy grid, adaptive expectations unfold: firstly, because actors find themselves part of a bigger network; secondly, due to their interest to maximise benefits according to their investment and to maintain such undertakings. Moreover, energy markets associated with infrastructure, unlike markets that are not bound to physical grids and networks, help create regimes based on institutional rules that need to be quite stable: since energy products

are a vital part of Member States' economies and due to their significance concerning social welfare.

Once these infrastructure projects are created, and long-term contracts between different actors are made, path dependent processes are initiated; not only because these contracts are concluded on a long-term basis, but also because coordination and network effects unfold. The more actors become part of the system, the more the system increases in terms of its value; coordination effects evolve as procedural and operational standards must be aligned to guarantee the smooth operation of the network and associated markets. Moreover, the Commission suggested that in order to protect Member States' economies against future energy supply and price crises, the Community should improve collective contingency arrangements. All Member States, even those with significant indigenous energy resources, would be affected by the economic disruption triggered through future energy crises, no matter how comprehensive national arrangements were (European Commission 1983c).

These ambitious ideas are evidence for the Commission's attempt to create a solid institutional path, to consolidate the capabilities of the Community and to reinforce the institutional framework. However, such efforts petered out due to the lack of a supporting institutional framework, enshrined in primary law. The proposals encompassed policy instruments that the applied theoretical framework identifies as factors contributing to path dependent processes. In addition, and as a reaction to exogenous factors, the Commission tried to overcome institutional shortcomings with regard to the correction of (socio-) economic problems, triggered by the energy crises with the implementation of secondary provisions based on new ideas and approaches.

Steinmo (2008) understands ideas as "creative solutions to collective action problems" (ibid.: 131). As explored, the Community faced collective actions problems after both energy crises in 1973 and 1979 due to diverging

preferences of the different Member States and, as a consequence of the joint-decision trap, the institution was severely locked-in. The Commission attempted to overcome the inability of the institution to deal with, and react to, imminent problems with ambitious policy proposals and innovative ideas. This implies that institutional change happens when powerful actors have the ability and the political will to change the institution in favour of new ideas (ibid.). However, as the evidence suggests, although Member States agreed to important *intended goals* with regard to the formulation of a comprehensive energy policy on a Community level, in reality, the Community fell short of any successful attempts to implement new ideas that could have made a real difference.

4.2. Assessing a critical juncture

In addition to the lack of institutional capacity to form a coherent and Community-wide energy policy, the Community faced a severe institutional crisis. When analysing the driving factors that contributed to the critical juncture that will be discussed in the following section, both exogenous *and* endogenous factors must be examined and accounted for. Critical junctures altering primary law are understood as those events that affect the institution as a whole. Such critical junctures are an institutional 'big bang', so to speak, and provide enough momentum to generate a force that punctuates the institutional trajectory in its entirety. Based on this understanding, it is posited that the creation of the ECSC, the EEC and EURATOM, and at this point in the historical analysis, the Single European Act (SEA), represent critical junctures for the entire institution. These critical junctures created (and altered) primary legislation.

The driving factors influencing the SEA can be reasoned through both exogenous and endogenous factors. A rational choice explanation suggests that preferences are exogenously given. Following this logic, economic

underperformance in terms of market competition, or an institutional crisis triggered by oil shocks would explain how certain preferences were formed. However, the empirical evidence examined so far suggests that when analysing critical junctures for primary legislation, not only exogenous but also endogenous factors played a role. Therefore, when we analyse the mechanisms that led to the implementation of the SEA, we must also incorporate an analysis of endogenous factors as possible determinants of institutional change. This can be reasoned through the following proposition: during a critical juncture, actors' preferences are exogenously given but also have an endogenous origin (Dietrich & List 2012). We will now look at the factors contributing to the critical juncture that instigated the SEA.

4.2.1. Preferences based on exogenous factors

In the case of the SEA, economic underperformance of the Community was evident before its adoption, corroborating the premise that exogenous factors can be identified as a possible cause for the institution to fall into disequilibrium. The growth rate of trade between the Member States declined proportionally to an increase of trade with the rest of the world. More importantly, Member States began to lose their share of the Community market concerning many industrial products. To exacerbate things further, American and Japanese manufacturing became dominant forces on the global markets and Member States were unable to respond to the increase in competition (Milward 2000). As Europe was incapable of keeping pace with its Japanese and American counterparts, Japanese and American manufacturing took a growing share of markets in the Community. The loss of market shares of Member States was an entirely unhealthy development for the EEC. In high technology sectors where economies of scale are supposed to be greatest, and which were supposed to be reinforced by the common market, European manufacturing was falling behind (Milward 2000). As a result of these developments, non-tariff barriers in the form of state subsidies and the creation

of national monopolies were introduced, distorting intra-West-European trade. As a matter of fact, the Community was less integrated by 1981 than it had been in 1973, which diminished its international competitiveness (ibid.).

By the early 1980s, extreme pessimism took hold in the Community; the often-cited 'Eurosclerosis' was evidence of an economic downturn that affected the institution. The impetus for change came from growing concerns about competition from Japan and the US, but also from the Community itself (Matlary 1997). Hence, exogenous factors in the form of increased economic competition from outside of the Community had a considerable impact upon the institutional trajectory of the EEC. When considering GDP, the economy in Europe was growing much slower in the 1970s and early 1980s than in the 1950s and 1960s[4]. The recession was also visible in the labour market, with the unemployment rate continuously increasing from 5.5% in 1978 to 11.5% in 1985, whereas in the US after 1982 it fell to about 7%. The labour market situation starkly contributed to Eurosclerosis (Giersch 1985).

In the mid 1980s considerable frustration spread through the Community and political elites, especially in France and Germany, were unsatisfied with the way the Community had developed, or in other words, with the lack of institutional development. Efforts to complete the internal market were soon instigated as an economic necessity. Economic elites were responsible for the design of new economic measures and political elites for the implementation. An unprecedented and new acceptance concerning deregulation in order to create functioning markets formed the basis for such undertakings. This new trend was palpable on the national level (with the exceptions of in Tory Britain and Francois Mitterrand's socialist France) which in turn created economic momentum on the Community level. The underlying rationale was that a more

[4] Annual GDP growth had fallen from 4.8% in 1973 to 2.1% in 1983, and between 1981 and 1985 the EEC showed an annual growth rate of 1.1%, which was only half the rate of the US economy and only a quarter of the Japanese.

efficient and better integrated market would create growth and minimise costs (Matlary 1997).

> "There was a shared understanding of the economic problems as well as an ideological vision of the political cure" (ibid.: 19).

4.2.2. Preferences based on endogenous factors

Before analysing the dynamics that forced the institution onto a new institutional path, let's explore the endogenous institutional factors which, in conjuncture with the exogenous factors, evoked the critical juncture that caused the institution to fall into disequilibrium. As already explained, a very important factor that contributed to the critical juncture was the perceived Euro-fatigue towards the EEC and the repercussions such developments had leading to a stalemate of the institution, the so-called 'Eurosclerosis' – a term coined in the eponymous paper by the German economist Giersch (1985). This 'Eurosclerosis' represented the immanent "institutional malaise" (Moravcsik 1991 :33) the EEC had to endure in the 1970s and 80s, and presented itself as an endogenous force that had a remarkable influence on the EEC and its ideological direction. What were the reasons for such a development?

To fully understand the dynamics that lead to the impasse, the Empty Chair Crisis and its remedy, the Luxembourg Compromise, must be considered as these two events set the stage for institutional inertia in the wider historical context. France initiated an institutional crisis in 1965 by not attending Council meetings due to internal disagreement in the Council over the Common Agricultural Policy (CAP), by claiming that it would be against France's interests. The deadlock was eventually resolved by the Luxembourg Compromise (the requirement to reach unanimity if national interests were at stake), which in practice meant that even small decisions required unanimity in the Council, hence, locking-in the institution even in policy areas were QMV

was the voting procedure. Although decisions by QMV gradually increased between 1966 and 1984, the Community was cautious not to invoke any similar preconditions that would led to the paralysis of the EEC and the traumatic experience of the Empty Chair Crisis (Good 1988). Although the Community expanded decisions that could be taken by QMV, in practice the Council was caught in a joint decision trap and the “unanimity requirement hindered the ability of the Council to make decisions efficiently throughout the 1970s” (ibid.: 307).

In addition to this structural impasse, the Community also suffered from an ideational crisis based on the perception of its own political identity, a institutional impasse, based on endogenous factors. The vision “to lay the foundations of an ever closer union among the peoples of Europe” (EEC Treaty preamble) and to give the Communities a political dimension / to create a closer political union was an aim already conveyed in the EEC Treaty. However, the framework of the EEC did not provide any institutional means to foster a political union. The European Parliament, especially after its members were directly elected from 1979 onwards, expressed its frustration concerning the slow development of the EEC into a political institution (Murphy 1989). Pressure for reform grew within Community institutions between 1980 and 1985. Particularly the European Parliament, the European Court of Justice, and the Commission, led by President Jacques Delors and internal market Commissioner Lord Arthur Cockfield, urged for a reform of the institutional design (Moravcsik 1991). Weiler (1983) states that “[i]n the late 1970's and early 1980's, crisis became a way of life and the Community has seen a plethora of reports and proposals for tackling the problem” (ibid.: 129), “advancing the concept of a political European union” (Murphy 1989: 339-340). In fact, not only supranational institutions advocated for a union. As early as 1972, government leaders also saw the creation of a European Union as a beneficial goal and “set themselves the major objective of transforming, before the end of the present decade and with the fullest respect for the Treaties

already signed, the whole complex of the relations of Member States into a European Union" (European Commission 1973: 16).

Among the proposals for unification (see Weiler 1983; Murphy 1989 for further information), the three most important attempts were the *Genscher-Colombo Draft European Act*, the *Solemn Declaration* which both are sometimes regarded as the precursors of the SEA (Moravcsik 1991), and the *Draft Treaty establishing the European Union* (Dinan 2012), which created endogenous momentum for institutional development.

In order to tackle the institutional malaise and economic recession, the *Genscher-Colombo Plan* (the *Draft European Act*), advocated by German Foreign Minister Hans-Dietrich Genscher and his Italian counterpart Emilio Colombo in 1981, endorsed a strategy towards European unification. In essence, the rationale behind the proposed act was based on three symptoms: a pervasive shortcoming of effectiveness regarding the Community decisional process; a potential for enlargement of the scope and impact of traditional Community policies; and a decline in the ideology and spirit of European integration (Weiler 1983). Both Genscher and Colombo frequently referred to the necessity for "relaunching of the European Ideal the need « to strengthen the political will of Europe », and this with, the objective of « spurring on the creation of the [European] Union », « boosting the idea of a European Union" (Genscher and Colombo as cited in Weiler 1983: 138-139). The Draft European Act was not only based on the rationale to tackle economic recession (Moravcsik 1991), but the initiative also strongly referred to setting up a renewed vision of the European Communities together with the proposition to instigate the relaunch of the European Union idea in order to solve the endogenous, institutional malaise (ibid.). Moreover, the act would have made the European Council the controlling political organ within a unified Europe (Murphy 1989). However, due to disagreement between Member States, the Genscher-Colombo initiative did not show the envisioned progress towards European unity. This was specially the case for France, whose

interest in Europe was limited to sporadic proposals in order to facilitate a socialist Europe, and Britain, for whom negotiations over the budget were the most important issue (Moravcsik 1991).

In response to the Draft European Act, the European Council issued the *Solemn Declaration on European Union* (or Stuttgart Declaration) in June 1983, which accepted the goal for a political union, but imposed no obligations on Member States to work towards that goal and envisioned a political union based on the existing EEC Treaty (Murphy 1989). It covered a wide range of institutional and policy issues, amongst them the completion of the internal market, and procedural and institutional reform (Dinan 2012). The declaration was promoted by national leaders at their summit in Stuttgart in June 1983, but subsequent British, Danish, French, Greek, and Irish objections reaffirming the Luxembourg Compromise brought a halt to any further developments. In addition, the Stuttgart Declaration was attacked by French Prime Minister Pierre Mauroy, hence, reinforcing the veto right (Moravcsik 1991). Nevertheless, the Solemn Declaration did have an impact on further institutional development as it convinced the European Parliament of the futility of trying to achieve a political union through intergovernmental negotiations (Murphy 1989).

In response to the Solemn Declaration, the *Draft Treaty Establishing the European Union*, adopted in 1984, was an outcome of the first directly elected European Parliament - an important institutional factor that provided further momentum for European unification. Under the patronage of veteran Italian Euro-federalist Altiero Spinelli, a founding father of the EC, and endorsed through the so-called ‘Crocodile Group’ (named after the Strasbourg restaurant where they first met), the European Parliament produced an ambitious proposal for unification. The Draft Treaty sought to substitute the existing treaty establishing the European Communities with a single European Union. As laid out in the document, the EU would maintain its basic institutional structure and legal competence. However, the decision-making procedure

would be strengthened and some of the Union's competences would be enhanced in the economic, social, and political domain. The purpose of the decision-making reform was to improve the efficiency of reaching agreements, and to tackle a perceived democratic deficit at the European level of governance (Dinan 2012).

The Draft Treaty was a bold attempt for unification proposing a federalist type of union among Member States of the EEC and would have dramatically increased the powers of the European Parliament at the expense of the European Council. The Draft Treaty would have impinged on the sovereignty of Member States more than the EEC Treaty, by conferring a common citizenship on citizens of signatory states and providing protection for certain fundamental human rights. Moreover, the Draft Treaty would have bestowed legal personality upon the Union (European Commission 1984). It goes without saying that the Draft Treaty was controversial among Member States (Murphy 1989), due to its far-reaching alterations to the institutional design. Nevertheless, it was still endorsed by national legislatures from Belgium, Denmark, France, Italy, Luxembourg, and West Germany. Given that there were 10 Member States at the time, this serves as evidence that these Member States perceived an urgent demand for profound institutional change. However, it would appear that the Draft Treaty was too ambitious in its scope (it was never ratified by all Member States). It nevertheless prompted further stimulus towards European unity.

As a response to the Draft Treaty of the European Parliament, the European Council set up an *ad hoc Committee* for Institutional Affairs at the Fontainebleau meeting with the goal in mind to increase European unity. The efforts of the Committee subsequently led to the so-called Dooge Report in March 1985 (Good 1988). The Report emphasised that, although its promising start after the Second World War as an unprecedented legal entity, based on the principles of pluralist democracy and the respect of human rights, the Community was in a severe endogenous crisis and suffered from serious

deficiencies (European Commission 1985c). Member States had become entangled in differences and, hence, could not benefit from the financial and economic advantages a common market and economic and monetary union would provide. In addition, and unlike the United States and Japan, Europe had not managed to achieve a growth rate sufficient to reduce the disturbing figure of almost 14 million Europeans in unemployment. The Dooge Report urged the Community to recover faith in itself on a new common venture: the formulation of a genuine political entity among European States – a European Union. To draw up a simple catalogue of different measures to be taken was not enough for such an undertaking, as such exercises have been made in the past without achieving any progress. Rather, common political will of Member States was needed to make a qualitative leap in order to foster European unity. The evidence suggests, that endogenous momentum for institutional change was strong in the Dooge Report. As prominently endorsed in the report, it stated that ambitions to create a European Union demanded not only cooperation based on economic reasons, but also required Member States to cooperate in fields other than economic ones (as the Community already did to a certain degree). Hence, the Committee proposed that an *intergovernmental conference* should be convened to negotiate a draft European Union Treaty based on the acquis communautaire, the Dooge Report, the Stuttgart Solemn Declaration on European Union, and in spirit and method of the Draft Treaty voted by the European Parliament (ibid.) - which is somewhat surprising given that the Draft Treaty was endorsed by the European Parliament (Murphy 1989).

4.2.3. The solution for an institution in crisis: the SEA

At the meeting in Brussels in March 1985, the European Council laid emphasis on the completion of the internal market and called upon the Commission to draw up a detailed programme with a specific timetable (European Council 1985a). Before the adoption of the SEA, the Commission put its utmost

attention on the Single European Market (SEM) programme as a successful realisation would “fundamentally alter the face of Europe” (European Commission 1985a: 18). Within seven years, the market programme would then remove the Community’s physical, technical and tax frontiers to create a genuine common market (ibid.). A White Paper, designed to spell out the programme and the timetable, and based on European Council recommendations, set out the “action to achieve a single large market by 1992 thereby creating a more favourable environment for stimulating enterprise, competition and trade” (European Commission 1985b: 3). Remarkably, as a reflection and consequence of past energy policy failures, the Commission did not include energy in the initial agenda for the SEM. Energy was indirectly affected by more general market provisions (McGowan 1989). However, the White Paper emphasised that the four major sectors, energy, transport, water and telecommunications, were not covered by Directives at that time and, hence, the document suggested that by 1988 energy should be included in the internal market programme as well (European Commission 1985b).

On a different note, contributing to the willingness of Member States to agree to complete the internal market was also a wide-ranging *change in economic ideologies* in different Member States, which led to experimentation regarding the privatisation of certain sectors and the deregulation of the economy in general. As Hall & Lamont (2013) contend, new (neoliberal-)ideas played an important role steering institutional change and in the governance of markets. The new liberal sentiment was triggered by the aforementioned issues regarding Member States’ competitiveness vis-à-vis Japan and the United States, the return of stark unemployment, and often very high inflation rates. Although these novel economic approaches were applied at different times in the different Member States, in the end, they nevertheless shared a common objective on a European level: to return to the growth rates of before 1974. As a consequence of this new Community spirit, and together with the shared willingness to end the institutional malaise on a Community level, the European Council decided at the Milan conference in June 1985 to complete

the single market (Milward 2000) and to overhaul the institutional design (European Council 1985b). In the run-up to the summit proposals began to multiply, and Jacques Delors, then Commission president, began to link internal market liberalisation to Qualified Majority Voting, “stressing that the first was unattainable without the second and that neither was possible without an intergovernmental conference to amend the Treaty of Rome” (Moravcsik 1991).

Recommendations by the Dooge Report and the White Paper were intensively discussed at the summit. The White Paper was unanimously accepted by all the Member States (ibid.). With such significant endogenous momentum and fresh Community spirit based on new ideas about how to govern the institution, the European Council held a wide-ranging discussion on the improvement of the Council’s decision-making procedure, the enlargement of the European Parliament’s role, the Commission’s administrative powers – with a view to their early adoption - and the strengthening of political cooperation in the context of a transition of the EEC to a European union. The European Council emphasised the need to improve the operation of the Community to reach its *intended goals*, especially with regard to the completion of the internal market and measures to advance a technological Europe (European Council 1985b). In accordance with Article 236 of the EEC Treaty, the Council convened an intergovernmental conference as suggested by the Dooge Report in order to deliberate on the amendments to be made to the treaties of the European Community (Good 1988). From there, things moved fast.

As stated by Capoccia and Kelemen (2007), from an HI perspective, the duration of the critical juncture must be briefer than the path dependent process it incites. However, it is also important to mention that this proposition concerns the actual *decision-making process* (which must be short) and not the timespan and events that contribute to evoking the institution to fall into dis-equilibrium (which usually takes a longer period of time). A draft of the SEA was written during the first month of the intergovernmental conference, and

the remaining issues were resolved in five meetings between the heads of state and foreign ministers between October and December 1985 (Moravcsik 1991). The SEA was signed on 17th February (Luxembourg) and 28th February (The Hague) 1986 (European Commission 1986), came into force on 1st July 1987 and set the overarching goal to complete the Single European Market (SEM) in the Community by 1992 (Single European Act 1987).

> As laid out in the Treaty, "[t]he internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty" (ibid.: 7).

4.3. The SEA and its effects on energy policy

The Single European Act Treaty can be understood as a critical juncture since it marked a turning point for the institutional trajectory and the further development of a common energy policy. It opened the door for the creation of an internal market for energy and paved the way for an increasingly efficient and effective decision-making process. The most important change in the SEA was the transition from unanimous voting to Qualified Majority Voting on matters concerning the internal market, in order to facilitate the adoption of approximately 300 directives necessary for its facilitation (Matlary 1997). Due to the changes brought about by the SEA, the Community was able to reach decisions and to adopt measures much quicker and more effectively than before, and energy policy was no exception. As the evidence has shown, many proposals collapsed owing to the requirement that their implementation was dependent on unanimous voting in the Council (ibid.). Hence, the Single European Act and the associated rule of Qualified Majority Voting in the Council represented a significant change to the Community's framework, and provided the institution with the capacity to free itself from the pathological lock-in that had plagued it during the preceding years. As Matlary (1997) puts it,

> "[t]he adoption of the SEA was a major step in the process of formal integration. It transferred decision-making power to the institutions of the EC, primarily the Council of Ministers because the member states had relinquished their right to veto decisions. Furthermore, the European Parliament (EP) was now able to play a more active role in amending proposals from the Commission. Thus, the changes made in the SEA allowed the Commission greater independence and also accorded a large role to the EP. The Commission and the EP now had a mutual advantage in forming an alliance, as in combination they could see a proposal through the Council of Ministers unless the latter rejected it unanimously" (ibid.: 20).

Energy policy-making in the Community had previously relied on the political will of national governments to cooperate, and the Commission was allocated a subordinate and goal-setting role, as a 'henchman' of the Member States (Tonini 2015). The Commission's policy endeavours were not central to Member States' own policies, and much less so regarding the development of a common energy market. Policy making was characterised by the self-interested behaviour of Member States; rational decision-making and utility maximisation dominated the energy sector; the institutional design foreclosed any advancement and change of its regulatory capacity. At best, energy policy was "largely indicative, consisting of information gathering, target setting and enabling activities" (McGowan 1989: 549). However, under the new market-based approach introduced by the SEA, the Commission was able to strengthen its powers vis a vie intergovernmental institutions and be more proactive with regard to policy making. The Commission's new role was closely associated with the revivification of the Community as the SEA strengthened supranational authority in several policy areas (Tonini 2015). The institution reinforced its capacity and actors became more embedded in the institutional framework. As mentioned before, deriving its authority from the SEA and the blueprint in the 1985's White Paper, the SEM programme did not include

energy. However, positive steps were taken from 1987 onwards (Padgett 1992) – as also suggested in the White Paper.

From a HI standpoint, the treaty change in the form of the SEA serves as valuable evidence for a critical juncture that affected the whole institution and changed the institutional trajectory. This change in primary law, in turn, opened the door for (smaller) exogenous and endogenous events to affect the institutional, since the institution now had the capacity to react to such events. Moreover, the SEA introduced the potential for incremental change in secondary law through increasing returns, as will be seen in the forthcoming chapters.

The evidence presented in this chapter suggests that exogenous factors only have an impact upon an institution (or a specific policy area), if relevant competences have already been ceded to the institution. This represents a key finding of this research project. If actors are reluctant to shift powers to the institution, or if there are no rules implemented that govern a specific sector in the first place - especially if the sector is associated with security concerns, high politics and the survival of the state (as in the case of energy policy) - the exogenous event will not have the capacity to alter the institutional path. As shown in Chapter III, if the institution is only made up of a minimum set of rules in a specific sector (or if there are none at all), and those rules and the associated decision-making is in the hands of Member States, exogenous events cannot unfold their full potential and, thus, cannot have an impact on secondary legislation. Institutional developments following the 1973 and 1979 oil crises support this claim.

As discussed in the theory chapter, primary law is the core of the institution; the institutional matrix is comprised of the rules that lay down the framework to regulate the behaviour of all the actors that are embraced by the institution. As the evidence suggests, the SEA can be seen as the outcome of a critical juncture for the institution, as it fundamentally altered the institutional trajectory

and the performance of the EEC *due to the amendments made in primary law*. The institutional lock-in was overcome when qualified majority voting became the voting procedure (Matlary 1997) and the institution changed to one that was capable of developing processes of increasing returns in the energy sector. As the second hypothesis proposes, due to the critical juncture punctuating the institution, primary legislation was amended: *moderate integration* of primary law happened as high institutional stickiness encountered a critical juncture. The high institutional inertia prevented the critical juncture from unfolding its full possible potential, which it would have done if institutional stickiness would have been lower, culminating in a moderate outcome for energy policy. Although deeper integration was evident - the institutional framework was comprehensively overhauled - energy policy was not directly part of primary law but had to be addressed through market provisions.

Chapter V: Path Dependence and Incremental Change

We will now turn towards an assessment of the policy development during a time characterised by a process of path dependence. The thesis will test the third hypothesis based on the fact that QMV was in place for secondary legislation concerning energy markets.

H3: If no critical juncture occurs in a setting of low institutional stickiness, moderate integration can be expected. Integration will occur in the form of incremental change of secondary legislation. However, small endogenous and exogenous events can have an impact on the institution in equilibrium, providing the possibility to alter the trajectory of a specific part of secondary law.

Shortly after the Single European Act was adopted, and after the 1986 oil price collapse and the Chernobyl nuclear accident, the Council adopted conclusions concerning new Community energy policy objectives for 1995 and convergence of the Member States' policies. The Council emphasised once again that the secure availability of energy on a stable economic basis remained a requirement for the attainment of social and economic goals. Therefore, if necessary, progress to restructure the energy economy should be reinforced at the Community level, and the coordination and harmonisation of national energy policies should be realised through a framework established by Community objectives (Council of the European Communities 1986). The Council underlined that such concerted action would demonstrate to consumers, producers and investors that the EEC was determined to improve their energy supply conditions (ibid.). However, as laid out in the document, the Council emphasised that such undertakings had to be in accordance with national policies, in the light of Member States' specific possibilities and constraints. These objectives were meant to be "indicative guidelines (…) without taking the form of rigid planning instruments" (ibid.: 1).

Propositions like these were not new, as many of the foregone conclusions endorsed similar action concerning Community-wide objectives[5]. However, this time the far-reaching alterations in primary legislation made it possible to actively pursue common goals and spark the development of an internal energy market. At the Council meeting on 2 June 1987, the prospects for a common energy market were discussed, against the backdrop of the policy objectives for 1995, in which the examination of national policies formed a major element. There was an exchange of views on the issue of the completion of the internal market. The Commission was asked to draw up an inventory of existing obstacles to the attainment of an internal market and, subsequently, submit proposals to the Council regarding the elimination these obstacles by the end of 1992 (Council of the European Communities 1988: 61). This request by the Council was the initial spark that ignited the overarching project of energy market liberalisation, based on the major Treaty revision of the SEA. The Commission duly took on the task and presented an inventory of the existing obstacles and an action plan to the realisation of an internal market in May 1988.

5.1. The Single European Market and the Internal Energy Market

The report *The Internal Energy Market* can be considered as the first important step towards energy market liberalisation. Most poignantly, the Commission started the communication with the insight that “considerable barriers to trade in energy products within the Community” still existed, and that “[i]f this state of affairs does not alter and if a common energy market is not achieved in the near future, the degree of integration achieved in this sector may well be jeopardized” (European Commission 1988: 2). These opening words were taken from a communication that was sent by the Commission to the Council

5 For instance, see Council of the European Communities 1974a, Council of the European Communities 1975, and Council of the European Communities 1980.

in 1968. It is quite interesting that the Commission decided to start the communication with lines that were, by that time, twenty years old; it suggests it was the Commission's intention to emphatically remind the Council that little progress had been made to integrate energy markets since 1968.

Regarding the findings of the Commission, all Member States were asked to submit their comments, together with a hundred or so organisations and enterprises. All energy sources were considered and producers and consumers submitted their contributions. Hence, the document was extensive in scope and addressed many different facets of energy policy. The scope and depth is owed to the fact that the energy market is not a homogenous sector, but one that is extremely diverse in terms of traded products and end-uses. In addition, there is a considerable amount of diversity regarding energy market operators, ranging from small to medium sized enterprises up to multinationals and political traditions. Taxation habits and energy resources also diverge from one Member State to another. It is hence the very nature of energy products and the conditions under which they are produced and consumed which constitutes the variation between Member States (European Commission 1988). The rationale for the creation of the single market was based on the Community's need to become more competitive in the global context. A better integrated internal energy market would reduce energy costs, which would benefit the individual consumer but also various industries. Industries would become more viable and increase their competitiveness, and the economic growth would in turn have a positive effect on employment. The internal energy market would improve the cost structure and rationalise energy production, transmission and distribution activities. Furthermore, the security of supply would be significantly enhanced and better interconnections would increase both the solidarity between Member States as well as have a positive impact on the flexibility of the industry. An increase in trading between the Member States at a lower price point was expected. The Commission emphasised that the "establishment of a more integrated energy market is of vital importance to the future of our Community" (ibid.: 6). The communication estimated that the

omission of an integrated energy market, the "*cost of non-Europe*" (ibid.: 6) as it was termed, would cost the community around 0.5% of the Community's GDP.

Hence, the Commission proposed a fourfold, comprehensive plan for action. Firstly, and based on the 1985 White Paper, the harmonisation of legally binding rules, technical norms and the opening up of public procurement was addressed. Secondly, the application of Community Law concerning the free movement of goods, state monopolies, rules of competition, and state aid to eliminate obstacles laid out in the Treaties should be enforced. Thirdly, provisions addressing the protection of the environment and health and safety standards would need to be harmonised. Lastly, in order to positively influence the development of energy trade, the differences between Member States in respect of energy costs, prices and tariffs needed to be harmonised and energy infrastructure for both electricity and gas improved (Padgett 1992). On a more general level, the Commission instigated a twin-track approach to energy policy making (the predominant approach ever since), which was based on the alignment of provisions regulating the energy market and using its competition powers against states and market participants that infringed on those rules. The SEA unblocked the legislative path and the Commission began to take advantage of its competition powers by launching a series of anti-trust cases, which brought an end to the legal monopolies certain states had held, concerning the import and export of energy (Buchan & Keay 2015, Eikeland 2011b).

5.1.1. Preferences informing policy making after the SEA

In general, Member States were unable to oppose new policy initiatives (as we will see later with the so-called First Energy Package), although most of them showed a great resistance towards them (Eikeland 2011b). From a HI standpoint, such developments are of great interest as they provide strong

evidence that actors had become highly entrenched in an institution and were subjected to the phenomenon of unintended consequences. As a matter of fact, now that the SEA had resolved the adverse situation of the Luxembourg Compromise, where unanimity was the quasi voting rule, and with renewed momentum regarding the European project and the commitment to the completion of the internal market, Member States did not have the powers to oppose new policy initiatives in energy policy as they had done in the 1970s and early 1980s. As Member States agreed to the SEM programme in the first place, they were not able to resist and escape the gravitational pull the amendments in primary law evoked. The new institutional design strongly bound them to the concessions they gave two years earlier, and deprived them of veto powers, in the wake of the renewed market-based approach triggered by the SEA. Of course, Member States were divided in terms of their preferences. As we will see later in this chapter, the institution constrained the available options for Member States more and more over time, and consequently, they agreed to policy proposals further down a sequence they would not have agreed to at an early stage. In sum, from a HI perspective, unintended consequences gradually evolved.

The empirical evidence also shows that most Member States were sceptical of the envisioned goals and the policy proposals published by the Commission, for different reasons (Schubert et al 2016). Germany and the Netherlands hoped for a broader European approach, Denmark opposed the idea to harmonise markets, due its commitment to nuclear-free electricity generation, which would be levered out by a common market, since the control over electricity production would be removed in an open market. Spain was afraid to lose income from transit charges on electricity transfer between France and Portugal. Greece worried about domestic coal production and its competiveness in a free market. The energy industry in general was concerned regarding new gas and electricity transit proposals, with France and the UK being the only exceptions. The underlying rationale was that the UK already liberalised its domestic energy market in the preceding years, and France

envisaged selling its overproduced nuclear-generated electricity (Schubert et al 2016). Nevertheless, from an HI standpoint, since market principles played such a great role in the new overarching institutional framework, Member States had to subjugate their individual national preferences and streamline them with other Member States to enhance policy making on the EU level, based on rational decision-making and the institutional constraints. If they did not, the "cost of non-Europe" (European Commission 1988: 6) looming in case of non-realisation of the Internal Energy Market (IEM) was too high, and all the positive effects market liberalisation would bring for different EU industries and consumers would have been lost. Member States could not challenge and contest the validity of market integration within the institutional setting, as market integration was the predominant norm, the backbone of European integration, and the dominant economic policy doctrine, at the time (Eising 2002).

The Commission's proposals reflected the dominant policy approach in the institutional setup of the EU, with market rationale at its core. However, to fully understand the make-up of the institution, the influence of institutional norms on the institutional matrix also must be taken into account as ideational components have significance within the system. In addition to the cost-benefit analysis of Member States concerning the IEM (confirming that the decision-making of Member States was rooted in the calculus approach, with the institution acting as an arbiter between actors), Eising (2002) shows how endogenous institutional norms also influenced the institutional trajectory in terms of decision-making procedures in energy policy. Such considerations greatly enrich HI's assumptions about institutions and how preferences are endogenously created within the institutional setup. Norms shape actors' orientations and their perceptions about the institution and, hence, 'what constitutes the EU's legitimate claim to make binding decisions' (ibid.: 103). For instance, the inclusion and participation of different EU bodies, societal actors, and the consensus principle within the Council bridge the gap between the different actors and stakeholders, and their respective preferences. Even

though Qualified Majority Voting (QMV) was increasingly common following the Single European Act (and later the Maastricht, Amsterdam, and Nice Treaties), the decision-making process was based on a consensus principle that tried to find acceptable solutions for all Member States (ibid.). Certainly, QMV created the conditions to reach decisions much more easily but the peculiarity of the mutual interests to reach a decision via consensus shows that decision-making is also influenced by normative factor.

To recall Scharpf's joint decision trap: the "pathologies of substantive public policy" are based on the condition that "decisions have to be unanimous" (Scharpf 1988: 267). In this sense, as long as unanimous voting rules apply (as opposed to qualified majority voting), policy choices tend to be rigid and unresponsive to change and "have an inherent (non-accidental) tendency to be sub-optimal" (Scharpf 1988: 267). After the SEA, QMV became an important feature of the Community in many of its activities. In practise though, most decisions were (and still are) reached by consensus. However, reaching consensus in a policy area under the shadow of *a vote* is altogether different than to reach consensus under the shadow of *a veto* (Weiler 1991). From an institutional standpoint, institutions deploy structural preconditions that shape and influence both the behaviour of actors and the structural factors that determine how decisions about policy choices are reached. Furthermore, and specifically important from a HI point of view, institutions and institutional choices made in the past constrain actors later in time (Pollak 2008). Hence, institutions play a remarkably important role in structuring, organising and governing different levels of political processes through formal and informal rules.

The awareness that informal rules unfold potential to influence the institution is corroborated in the case of the introduction of QMV together with the normative implication of finding a consensus between Member States, concerning their respective preferences (and hence their policy choices). The

structural design of the institution facilitates and upholds such behaviour. As Weiler (1991) elaborates,

> "[t]he possibility of breaking deadlocks by voting drives the negotiators to break the deadlock without actually resorting to the vote. And (…) the power of the Commission as an intermediary among the negotiating members of Council has been considerably strengthened" (ibid.: 2461).

Based on this logic, the mere *prospect of a QMV vote* constrains and shapes the policy options for Member States in the sense that they are more inclined to make compromises due to the prevalent institutional setup. The costs of being outvoted on important issues is simply too high. It is thus far better to find a compromise on contested topics rather than to unitarily resort to a hard-line stance, which in turn enhances the risk that the actor's preferences are not considered at all. Under unanimous voting, the option for Member States to instigate a deadlock is ultimately feasible, as veto players, dependent on their unilateral preferences, can stop any decision-making process all together. Hence, the norm to resort to consensus not only constitutes a form of comprehensive protection against any unwanted repercussions, for instance, being outvoted on very important issues like the Internal Energy Market. It also ensures that Member States search for an outcome that is acceptable for all Member States from a normative standpoint, so that decisions are perceived as adequate, appropriate and fair (see March & Olsen 1989 'logic of appropriateness'). This in turn also ensures that Member States comply with negotiated rules, and the Council hence makes strong efforts to produce outcomes that every Member State can accept (Eising 2002).

The Commission elaborated on different decision-making procedures for the gas and electricity sectors, which traditionally had been dominated by vertically integrated national oil companies (NOCs), to liberalise these markets and provide fair competition for all market participants. The first suggestion was the application of competition rules (at that time it was Article 85 and 86 of the EEC Treaty) as a means to dismantle dominant market players and utilities. The

second, was to instigate infringement procedures on the basis of Article 169 EEC. Thirdly, the gas and electricity sector would need to be governed by specific Directives. These directives could either be unilaterally formulated by the Commission according to Article 90 (3) EEC-Treaty; or fourthly, in accordance with Article 100a EEC, which was a consensus-based decision-making procedure, and which would allow other EU bodies to decide on the space and scope regarding policy measures to liberalise energy markets (Eikeland 2011b). As energy was widely regarded as a public good, a large part of the Commission (including the energy policy department), the Council and the European Parliament preferred a stepwise, consensus-based approach to decision-making that allowed for incremental change (Eising 2002). The Directorate General for Competition (DG COMP), on the other hand, strived for a faster breakup of the NOCs by using competition rules and Article 90 (now Article 86 of EC Treaty). Under this provision, they could initiate legal action unilaterally. DG COMP started infringement procedures against some of the Member States, in order to maintain a high degree of pressure, and to swiftly achieve a single market in energy (Eikeland 2011b.). However, as already stated, most of the Commission directorates refused to support the aggressive approach of DG COMP and instead proposed a stepwise procedure for policy making.

In the end, following a European Court of Justice (ECJ) ruling, the abrasive competition policy route envisioned by DG Comp was waived for the more inclusive approach of a co-decision procedure that required both the EP and the Council to agree to a new directive and to consult energy utilities, so that all voices would be considered. The consensus-oriented approach ensured that all the actors retained a high degree of control over the outcome and a more appropriate regulatory environment than a purely legal strategy would provide (Eising 2002). Most importantly, the consensus norm was not only confined to the choice of the decision –making procedure, but also applied to decision-making in the Council. The co-decision procedure allowed for QMV in the Council. However, due to the heterogeneity of national energy structures

and the economic relevance of energy, the Member States were not willing to outvote each other on salient issues. Even big antagonists like Germany and France agreed not to isolate one another during the Council negotiations but instead agreed to search for a consensual solution acceptable for all Member States (ibid.). As the evidence suggests, endogenous normative factors also played a significant role in the institutional design, supporting the claim that institutions not only provide formal rules but also provide moral and cognitive templates, allowing for individual construction of possible action (Hall & Taylor 1996). Actors are deeply embedded in institutions, which transport norms and values, and hence, their actions are also shaped by, and grounded in, a logic of appropriateness.

5.1.2. The First Energy Package

As an outcome of these considerations, the recommendations as promoted in *The Internal Energy Market* (European Commission 1988) led to the first legislative package that was adopted at the beginning of the 1990s (Andoura et al 2010). As already stated, the electricity and gas sectors were viewed as particularly challenging as most of the time they were nationally dominant, vertically integrated utilities. Hence, breaking up these structures was seen as pivotal to create free and fair competition and a level playing field for all actors involved (Eikeland 2011b). The Directives were the first step towards the liberalisation of energy markets, but were not broad in scope. One Directive concentrated on the transparency of gas and electricity prices (Directive 90/377/EEC), two addressed the transit of electricity and gas through the main transmission grids (Directive 90/547/EEC and Directive 91/296/EEC), and a fourth addressed the liberalisation of certain activities (prospection, exploration and production) related to hydrocarbon products (Directive 94/22/EC) (Andoura et al 2010).

The launch of the market programme coincided with a drop in the price of oil in 1986, which remained low for the next couple of years. It subsequently rose, however, only to fall again in the late 1990s. The price drop in turn created a favourable economic environment, bolstering the market programme, alleviating economic issues associated with the structural reforms, and creating more winners than losers in all sectors. Exogenous factors helped to give energy policy and the single market programme greater momentum. As a consequence of the eased supply conditions, EC Member States did not focus on energy security as they had done in previous years. This made it much easier for Member States to accept any market liberalising policy measures without constantly worrying about the impact of these policies on their respective security situation and national energy policy more general (Buchan & Keay 2015). Moreover, due to the exogenous factor of the oil price collapse, which impinged on governance in Europe, energy companies tried to reduce their costs to remain competitive, whilst low-cost sources of energy flooded the market, especially from the Middle East. The inefficiencies of state-owned industries, and the unwillingness of governments to continue to support the big NOCs, made it easier for the liberalisation of energy markets (Stern 1998).

Nevertheless, the SEM initiative gave rise to an intense debate within the European gas and electricity sectors on the merits of marked liberalisation and liberalising the access to networks, with the dominant domestic players in continental Europe fiercely opposing any changes in the status quo. The prevalent view of the gas and electricity industries was that the involvement of Brussels was neither necessary nor welcome. Some views were based on the fear of losing substantial profit, others were simply a reflection of fear of change (Stern 1998). To take full advantage of energy markets, the Commission sought to invigorate them through two different processes: by increasing competition and liberalising energy markets. The former was driven by changes in the supply/demand balance and by aspirations of new entrants to the gas sector; the latter was driven by national and European Union commitments to open markets, greater efficiency and consumer choice (Stern

1998). The passage of the first directives concerning price transparency and the gas and electricity transit directives paved the way for subsequent secondary legislation, as information about price levels and energy infrastructure in different Member States allowed for a more systematic analysis of the possible benefits of market liberalisation (Brutschin 2016). Path dependent processes gradually evolved, and monitoring, learning and coordination effects began to unfold.

Based on these successes, the Commission strived for bolder moves towards serious liberalisation, which was still considered a stumbling block. The Commission created a consultative committee for the gas and electricity sectors, which reported their findings in 1991. It soon became evident that the electricity sector conceded that market liberalisation would bring efficiencies and advantages to the system, whereas the gas sector "regarded the introduction of liberalisation as the equivalent of the end of civilisation. As far as the Commission was concerned, the gas gatekeepers were the ultimate liberalization refuseniks" (Stern 1998: 91). In this regard, the proponents of market liberalisation in the gas sector consisted of the UK (where markets were already liberalised), Denmark, Ireland, and Portugal, whereas France, Belgium and Luxembourg were sceptical (Brutschin 2016). In the electricity sector, similar preconditions were prevalent, with the UK and the Scandinavian countries supporting liberalisation, as these already opened their energy markets through national legislation, and France and Germany acting in tandem to prevent Brussels from reshaping the structure of their energy industries (Buchan 2009).

In February 1992, the Commission published a draft directive concerning common rules for the internal market in electricity and natural gas (European Commission 1992), creating new sets of *intended goals*. The issue of non-discriminatory access to pipeline networks by market participants that do not own the physical infrastructure for transmission – the so-called third party access (TPA) – was conceived as the key to enhance competition in energy

markets and on the agenda of the European Community since 1988 (ibid.). TPA was conceived as the ultimate solution for dismantling natural monopolies and deployed as the spearhead principle of energy liberalisation. “Almost all of the other proposals emanating from Brussels are simply designed to make TPA happen” (Buchan 2009: 21). The second important pillar to facilitate market liberalisation was the separation of the management and accounting of production, transmission and distribution activities. The so-called unbundling was proposed as a means to ensure the transparency of operations of vertically integrated companies (European Commission 1992). In basic terms, unbundling creates a conflict of interest within vertically integrated firms. Unbundling is necessary because by allowing access to the network, the distribution/transmission branch of the company creates competition for the supply arm which will affect the overall return of the company (Talus 2013).

The separation of energy supply and generation from the operation of transmission networks was a means to ensure that the transmission and distribution functions were managed in a neutral way, and that discrimination against competitors is avoided. However, ownership structures should not be affected by such undertakings. The Commission proposed a gradual development of the energy markets that was based on a step by step approach in order to give the electricity and gas industries sufficient time to the new requirements of the markets (European Commission 1992). However, with the intense opposition from industry, it soon became clear that the draft directive could not succeed. For instance, the European Union of the Natural Gas Industry (EUROGAS) criticised that spreading TPA over several steps might be a political compromise but would not change the measure from an economic point of view. The introduction of TPA would compromise the system of long-term contracts and would diminish the ability of the gas industry to participate in the development of this form of energy, which was recognized as essential for the entire economy and for the protection of the environment. EUROGAS contended that TPA might bring a temporary cost advantage to

some large gas users but at the expense of other consumers and of market penetration. Moreover, the legislation proposed would lead to more significant regulation and a stricter regulatory regime. According to EUROGAS, experience in the United States, for example, showed that TPA leads to creeping regulation, generating much litigation instead of liberalisation (Agence Europe 1992).

The issue of unbundling could have been resolved However, the serious stumbling block was the question about granting TPA to third parties. The important conclusion that was drawn during the negotiation process was the realisation that the gas and electricity industries would need to be separated in terms of liberalisation proposals (Stern 1998).

As one might assume, the Gas and Electricity Directive were watered down from the initial proposal of the Commission (Eikeland 2011b). However, the value of the gas directive, for instance, lay not so much in the specific legal provisions, but rather in the fact that it “establishe[d] both the principle of access to networks, and the assurance that the opponents of competition and liberalization [could] not indefinitely procrastinate in the opening up of their markets” (Stern 1998: xvii). An important insight, especially from an HI standpoint, is that as soon as first steps towards liberalisation were taken - and although some Member States still had objections towards further liberalisation - path dependent processes and incremental change were instigated. Hence, slow and incremental policy change occurred, however, as Stern puts it regarding the first gas directive, “(t)hose who expect anything more concrete to emerge from the Directive will almost certainly be disappointed” (Stern 1998: xvii). He clarified, however, that most importantly, energy liberalisation had to be addressed henceforth and could not be discounted as had been the case previously (ibid.). Based on this logic, both directives must be valued not so much for their respective impact on energy policy (although they introduced measures for liberalisation); but rather, because they established a gravitational pull towards the institution and further policy development hereinafter. Moreover, even if the directives were less

ambitious than the Commission had hoped, it allowed those Member States who were in favour of liberalisation of their energy markets to proceed without being slowed down by the more critical states (Andoura et al 2010).

The first Directive 96/92/EC (EP/Council 1996) which addressed the internal electricity market, required integrated companies to keep separate accounts for their generation, transmission and distribution activities ('unbundled accounts'). With regard to the access to transmission systems, Member States[6] were given the choice between three different institutional approaches: they could either opt for negotiated access (negotiated between the incumbent and the new entrant), a single buyer option, or regulated Third Party Access. Negotiated Third Party Access (NTPA) meant that all electricity producers and suppliers and all eligible customers could sign supply contracts with each other. The modalities and terms of grid access – in particular the transmission price – should be negotiated between the parties to the contract and the network operator. The negotiation with the grid operator was the defining feature of this model of access to the network. Due to the contingency of the negotiation process, which had to be done for every single case, negotiations lead to different prices for transmission (Bier 1999). The single buyer option (SB), on the other hand, required Member States to designate a so-called 'single buyer' who set a non-discriminatory tariff for the use of the transmission and distribution system. A single buyer was defined as "any legal person who, within the system where he was established, was responsible for the unified management of the transmission system and / or for centralized electricity purchasing and selling" (EP/Council 1996: 23). The single buyer was obliged to supply all customers with electricity within the territory concerned. Eligible customers, however, were free to conclude supply contracts with producers and supply undertakings inside and outside the territory covered by the system. The single buyer was then obliged to buy the contracted quantities

[6] Of the 14 Member States (excluding Luxembourg), six were monopolies (Belgium, France, Greece, Ireland, Italy and Portugal), four were effectively duopolies (Germany, Spain, Denmark and the UK), and four had competitive structures of sorts (Austria, Finland, the Netherlands and Sweden) (Thomas 2005).

from producers either inside or outside the territory covered by the system – at a price which was equal to the sale price offered by the single buyer to eligible customers, minus the price of the published tariff (ibid.). The regulated Third Party Access (RTPA), which was the third option Member States could opt for, gave eligible customers the right of access based on published tariffs for the use of transmission and distribution systems (ibid.). 10 Member States opted for the RTPA system, two for the single buyer, and two for the NTPA system. Since the SB and the RTPA system featured the same regulatory approach (where a uniform transmission tariff was set by the regulator), leading to the same net payment flows, it became clear that the RTPA and the SB were virtually identical (Bier 1999).

Although the directive set out the basic regulatory regime for organising market liberalisation, only very little guidance was given on how to issue tariffs (they had to be transparent and non-discriminatory) and what methodology should be used to calculate these (Stern 1999). Directive 96/92/EC only referred to a 'competent authority' that should be set up to resolve disputes between parties concerning contracts, negotiations, and refusal of access, or refusal to purchase. In addition, the directive set deadlines for opening the retail market for large users and distributers: by February 1999, 26% of the market had to be open; by February 2000, about 28% of the market had to be opened; and by February 2003, about 33% of the market had to be open. Member States were given some leeway about how this was interpreted and consumers could include retail supply companies (Thomas 2005).

As for the gas sector, Member States were divided in terms of their preferences regarding appropriate instruments for the liberalisation of the gas sector, and with incumbent firms strongly opposed to TPA, it took two years before Member States could agree on a regulatory regime for liberalising gas markets. Around the same time as the final decision were made on the Electricity Directive, the Irish Presidency circulated a draft proposal for a Gas Directive endorsing a new set of *intended goals*. As endorsed by the Council

conclusions, there was a convergence of views by Member States on the public service and unbundling aspects of liberalisation of gas markets. However, major divergences persisted over the approach to access to networks and long-term 'take-or-pay' contracts. France, Belgium, and Luxembourg were especially critical of liberalising gas markets. France, for instance, contended that,

> "it is imperative for the states to be allowed to impose strong public service obligations on gas undertakings, notably in relation to secure supplies, environmental protection and equalization of prices (guaranteeing equal treatment for all consumers)" (Agence Europe 1996).

Hence, the proposal was met with stark opposition by some Member States.

On the other hand, Germany, the United Kingdom, and the Netherlands warned against the danger of seeing public service obligations preventing the development of real competition on energy markets (ibid.). France, Belgium, Spain, and Greece, who were especially dependent on gas supplies from outside of the EU, opposed liberalisation on the grounds of long term contracts with third countries - so-called take-or-pay (TOP) contracts (ibid.). TOP contracts are very common in the energy sector and are a provision written into a contract, to either buy a predefined quantity of (a) energy product(s), or paying a specific amount to compensate for the loss. Customers have to buy an agreed amount of energy over a specific timespan, but can opt to pay compensation if they decide that, due to the volatility of the market, the commodity is not needed to the extent that was anticipated. Overhead costs for suppliers are very high in the energy sector; therefore, long-term TOP contracts ensure that energy suppliers have an economic incentive to expend capital upfront to finance upstream and downstream activities and to reduce uncertainty and reduce the risk of losing money. TOP contracts, hence, guarantee a steady income for investors even if (a) certain product(s) are not sold on the market. Due to such long-term commitments, France, Belgium, Spain, and Greece contended that, under the regime of a new Gas Directive,

Member States should have the possibility to comply with the TOP contracts agreed with third country suppliers. On the other hand, the UK and the Netherlands (the two largest gas producers), partly supported by Germany, were against any form of provisions in gas contracts that could be a hindrance to free competition (Agence Europe 1996).

After lengthy negotiations, Directive 98/30/EC (EP/Council 1998) concerning common rules for the internal market in natural gas was adopted in June 1998, reflecting a new *policy output*. The Directive was essentially the same as the Electricity Directive concerning the unbundling of accounts, Third Party Access, and transmission and distribution. An important difference between the Gas and Electricity Directive addressed the tendering procedure for new production facilities – which was an important part of the Electricity Directive. The difference was owed to the fact that the location of production facilities in the gas sector are determined by physical resource location, which does not apply to the electricity sector (Thomas 2005). Moreover, Member States could only make a choice between a system of 'negotiated access' and 'regulated access', the 'single buyer' option does not appear in the Gas Directive (Thomas 2005; Stern 1998). Deadlines for the implementation of the Directive were quite relaxed, Member States should open 20% of their market immediately, 28% five years later (in 2003), and 38% in 2018, 20 years after the Directive entered into force (EP/Council 1998).

Addressing the measurement of the dependent variable through the *policy outcome*, both the Electricity and Gas Directives were rather modest regarding their respective impact on the energy sector and their capacity to liberalise energy markets. As explained in the methodology section, the *policy outcome* is understood as the degree to which the *policy output* proves to be effective in attaining a set of predefined goals. In this regard, the two Directives as part of the First Energy Package, showed a moderate level of *effectiveness,* as discussed further down. Nevertheless, compared with the situation of the 1970s and 1980s, the regulatory framework improved from a low level of

effectiveness to a moderate level of *effectiveness*: the level of the process of integration is measured as the difference between different levels of *policy outcomes* (*effectiveness* of the *policy output*) at different points in time. Thus, a process of moderate integration can be identified.

Regarding the First Energy package, the Directives were criticised for leaving integrated companies too many ways to get around the provisions that tried to break up monopolies and grant competitors non-discriminatory access to transmission/distribution networks. Integrated energy companies merely needed to make an accounting separation of their network activities and their respective retail / production / import activities. In addition, if Member States opted for the negotiated TPA, integrated companies could refuse TPA to competitors on grounds of system security and provided companies with ample scope to avoid opening their networks (Thomas 2005).

As the First Energy Package included merely 'management unbundling' (the separation of accounts), the legal provisions were only of limited practical value. This mandatory building of 'glass walls' or 'Chinese walls' resulted at best in a kind of quasi-independence (Talus 2013). Both energy market directives can only be considered as a first policy instrument fostering a regulatory regime capable of increasing EU-wide competition; however, even given the well-known shortcomings of the First Energy package, they represented an important start on the road to deeper integration of European energy policy as a part of the subsequent policy cycle. Hence, the "first internal energy market directives were the first constructive and significant steps towards restructuring the EU's energy industries and creating an internal energy market since the Treaty of Rome established the rules on the internal markets and free trade law of the EU" (ibid.: 237). Energy markets did not materialise to the extent envisaged, which should not be necessarily considered a failure of the system. Rather, energy markets needed time to develop as energy is a far too strategic and politicised commodity to be susceptible to an easy legislative fix (ibid.).

5.1.3. The Second Energy Package

The Commission took the First Energy Package as a starting point for the promotion of further movement towards opening the markets. Most countries adopted the more liberal options within the framework of the First Energy Package and opened their respective markets more than the Directives would have required (Thomas 2005; Andoura et al. 2010). In January 2001, then Commissioner for energy, Loyola de Palacio, stated that the results of the First Gas and Electricity Directives were encouraging but only the start for further market opening and the adoption of new accompanying measures. According to de Palacio, due to the First Energy Package, two thirds of demand, and three quarters of gas demand had been opened up to competition, and the price for industrial consumers had fallen by 25% since 1995 (Agence Europe 2001a). Hence, endogenous momentum for further policy development had been created. On 13 March 2001, the Commission adopted a proposal to amend the Gas and Electricity Directives 96/92/EC and 98/30/EC and to speed up the liberalisation process. The proposals sought to strengthen the provisions that were laid out in the First Energy Package and were a logical step further towards the liberalisation of the energy markets – based on the step by step approach as envisioned in the first proposal of 1992 (European Commission 1992: 8).

New ambitious *intended goals* were set. First of all, Member States had to ensure that an independent national regulator was created to guarantee non-discriminatory access to the network. These authorities should be wholly independent from the gas/electricity industries. They should have the competence to fix or approve terms and conditions for connection and access to national networks, including transmission and distribution tariffs for both sectors; define the rules for the regime to allocate interconnection capacity for both sectors; fix or approve tariffs, or changes in tariffs at national level, to

reflect costs or revenues related to cross border transmission of electricity; and terms, conditions, and tariffs for access to liquefied natural gas (LNG) facilitates. Regarding unbundling, the proposal stipulated that the independence of the transmission system operators (TSOs) was of utmost importance and the provisions on unbundling must be strengthened. Additionally, in order to ensure non-discriminatory access to distribution networks, unbundling requirements for the distribution system operators (DSOs) concerning both the gas and the electricity sectors should be introduced. The proposal endorsed that both TSOs and DSOs should be independent in terms of its legal form, organisation and decision-making from other activities not relating to transmission/distribution. Regarding Third Party Access (TPA), Member States should ensure the implementation of non-discriminatory access to the transmission and distribution system based on published tariffs that should be set by a national regulatory authority. Member States should ensure that all customers are free to purchase gas/electricity from the supplier of their choice and have the rights for TPA from 1 January 2005 at the latest (European Commission 2001).

As one might expect, the responses of the different Member States were heterogeneous. Denmark, the United Kingdom, the Netherlands, Ireland, Spain, Finland, Germany, Austria, and Sweden were in favour of accelerating energy liberalisation; Portugal, Belgium, Luxembourg, Greece and France; on the other hand, wanted liberalisation not to occur “to the detriment of the general interest” (Agence Europe 2001b: 1) – especially France did not want to set any precise dates for market liberalisation.

The Second Energy Package strived for a stronger regulatory framework that accommodated the emergence of a further degree of competition and, hence, set a path facilitating the opening of energy markets based on a robust set of *intended goals*. As corroborated by HI’s assumption about the development of the institutional trajectory, once initial institutional choices were made (here, in the form of the First Energy Package) and if the institution is in a state of

equilibrium, path dependent processes begin to unfold and put the institution on a stable institutional path. These path dependent processes are based on positive feedback mechanisms and a continuous policy cycle, adaptive expectations, and learning processes which reinforce the institutional path. Hence, from an institutionalist perspective, the First Energy Package laid a solid foundation for further institutional development in energy policy and created the preconditions for step-wise, incremental change. The important insight is, however, that changes to the institutional matrix did not occur in sudden bursts of completely new and unprecedented legal provisions, where far-reaching alterations to the institutional setup were introduced, but rather, and based on preceding steps, only incremental change can be observed. Although novel provisions were introduced, they nevertheless were subordinate to the *intended goals* of the legal provisions (in this case, market liberalisation). The Second Energy Package did not deviate from this rule. Following the regulatory foundations laid out in the First Energy Package, alterations were made based on these preceding legal provisions and existing policy instruments.

The second important observation that can be made is that, although most of the Member States were initially against energy liberalisation (see the section on the early 1990s), due to path dependent processes, Member States were entrenched in, and embraced by, institutional (formal) rules they collectively agreed upon and from which they could not deviate. Firstly, due to the SEA and the commitment to the completion of the SEM, and secondly, as a consequence of such a commitment, the assent to the First Energy Package determined the parameters of further policy choices. Whereas Member States, before the enactment of the SEA, had the opportunity to shape energy policy depending on their (unilateral) preferences, the SEA and the change of the voting rule towards QMV deprived them from the prospect to hamper deeper integration. Furthermore, commitments to the co-decisions procedure, the (informal) consensus rule in the Council, and most importantly, the (formal) commitments to market liberalisation (which translated into deeper market

integration) restricted and steered their policy options and made a total stalemate in form of a locked-in institution impossible. Initially, with the exception of the UK, which already had liberalised its domestic markets, most Member States were against the liberalisation of their respective energy markets and the dismantling of their vertically integrated energy companies in the late 1980s / early 1990s. Such sentiment was reasoned through notions of the security of energy supply and the perception of energy as a public good, and a strategic and politicised commodity. However, due to the SEA and the step-wise introduction of secondary law, Member states committed themselves to the continuation and further development of these specific rules, as the institution steered and constrained their potential policy options. The institution was on its way, only moving slowly and changing incrementally, but it was nevertheless on a stable institutional path. Under such premises, change is always based on small alterations, not big ones. Big alterations only happen together with critical junctures. Based on such an understanding of institutions and energy policy as a constituent part of the regulatory framework of the EU, the Second Energy Package was a further step up from the initial policy decision of the First Gas and Electricity Directives.

Eventually, on 26 June 2003, both the Electricity and Gas Directive 2003/54/EC and 2003/55/EC (EP/Council 2003a; EP/Council 2003b) were adopted providing a new *policy output*. The Second Energy Package marked an important improvement from the previous regime (Talus 2003). In a nutshell, both Directives required the legal and functional unbundling for both Transmission System Operators (TSOs), and larger Distribution System Operators (DSOs) from any other parts and activities of a vertically integrated undertaking (for instance, supply, generation, and production activities). The Directives state that both the TSO and the DSO “shall be independent at least in terms of its legal form, organisation and decision-making from other activities” (EP/Council 2003a: 45 & 46) not related to transmission / distribution. However, the legal separation should not create an obligation to separate the ownership of assets of the transmission / distribution system from

the vertically integrated undertaking (ibid.). Nevertheless, the requirement to set up a separated legal entity was an advancement in terms of the institutional rules compared to the First Energy Package, which merely stipulated the separation of accounts. It was believed that by creating a separate legal entity, the employers, including the management, would increasingly be able to act independently from the parent company (Talus 2003). Empirical evidence suggests that incremental progress was made in terms of unbundling (although not providing the ultimate solution to enhancing competition as we will see in the upcoming chapter).

In terms of the Third Party Access (TPA) to the transmission and distribution systems, both Directives abandoned the possibility for negotiated TPA (it just remained as a component for storage in the Gas Directive) and, instead, regulated TPA was the only option. TPA was based on published tariffs and applicable to all eligible customers without discrimination, between different system users. The single buyer option of the First Electricity Directive was completely discarded. Member States had to ensure that the tariffs regarding access to transmission systems, or the methodologies underlying their calculations, had to be approved by a regulatory authority. The regulatory authority had to be wholly independent from the interests of the gas / electricity industries and should "at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market" (EP/Council 2003b: 70). The authority was obliged to conduct important monitoring processes (as part of the policy cycle) to guarantee and safeguard further liberalisation of the energy market and to design the methodologies used to calculate transmission and distribution tariffs. Whereas in the First Energy Package a 'competent authority' was merely responsible for dispute settlement, it was given more latitude to assess and influence the implementation of the Electricity and Gas Directive.

From an HI standpoint such developments can be explained through the institutions' occupation to constantly monitor and evaluate the implementation

of the *policy output*, and to have all the necessary information about the performance of the institution available. If necessary, monitoring mechanisms are also important to help readjust the way how the policy output and the different provisions are translated into concrete action by various actors and stakeholders. Monitoring is an essential part of the policy cycle and co-responsible for creating increasing returns. The continuum of the *intended goals*, *policy output*, *policy outcome*, and the inherent monitoring processes associated with the policy outcome constitute the basis for an explanation of how increasing returns can unfold (and how incremental change is facilitated). Derived from such considerations, monitoring processes ensure that the policy output is executed within the prescribed legal parameters and the information derived from such an assessment is fed back into the institutional matrix, contributing to a policy feedback. Integral parts of the policy cycle are hence based on monitoring mechanisms, which are subsumed as learning and coordination effects. Once a certain path is established, the network externalities, the learning process of institutions, and "the historically derived subjective modelling of the issues reinforce the course" (North 1990:99). Hence, the expansion of the regulatory authority's competences was an important contribution to enhance the institutional framework and led to more institutional stability and deeper integration. The Second Electricity and Gas Directives were also more ambitious in terms of the transpositions of the provisions than their predecessors. In terms of the level of the process of integration, the difference between the First and the Second Energy Package serves as evidence for a moderate increase in integration. The envisioned implementation of the Electricity and Gas Directive required that by 1 July 2004, at the latest, all non-household customers should be allowed to choose their retail suppliers; and by 1 July 2007, all customers (including residential customers) should be allowed retail competition – which means a market opening of 100% in total.

In sum, the 2003 Gas and Electricity Directives addressed the criticisms of the First Energy Package on access to the networks through new measures on

unbundling and regulation and by excluding the less liberal approaches on network access. However, in terms of the *policy outcome,* a criticism of the Energy Package was based on the fact that the provisions were not explicit about breaking up the dominant national companies and wholesale markets (Thomas 2005).

When assessing the *policy outcome* and the implementation of the Directives, due to the very ambitious policy provisions, Member States have been slow to meet the requirements, which necessitated that industrial consumers could benefit from free supplier choice by 1 July 2004. Therefore, the Commission sent letters of formal notice in October 2004 to 18 Member States asking them to speed up the process and to transpose the Directives on the internal markets into national law, proving endogenous momentum to speed up change. Loyola de Palacio, then vice-president of the Commission, and Commissioner for Energy and Transport, emphasised that some of the Member States had partially transposed the Directives and liberalised their markets, however, the proceedings should ensure that missing elements would be included (Agence Europe 2004a). In November 2005, based on a report that was adopted by the Commission, several infringement proceedings against different Member States were instigated and six of them were cited before the European Court of Justice (ECJ): Spain, Luxembourg (electricity and gas), Estonia and Ireland (gas), and Portugal and Greece (electricity).

Overall, progress towards market liberalisation was rather slow. Several Member States were nearly one year behind the envisioned schedule, whereas others took a minimalist approach to the transposition into national law (Agence Europe 2005). An additional factor hampering real competition was the incorrect use of existing infrastructure and, in case of electricity, the lack of interconnections between Member States. Therefore, the Commission announced to continue the inquiry to determine which solutions would be the most appropriate to create a well-functioning internal market (ibid.). A thorough analysis of energy markets revealed that, although the basic concepts of the

internal energy market had become embedded in terms of the legal framework, institutional arrangements and the physical infrastructure, barriers to meaningful competition still existed in many Member States – only some, often uneven, progress had been achieved and price differences still existed. In many cases, customers simply did not have the possibility to change suppliers; even customers who changed supplier were often not satisfied with the range of offers they received and stakeholders did not display a high level of confidence in the internal market. Such hindrances were based on regulated prices preventing entry from new market players, insufficient unbundling of TSOs and DSOs which did not guarantee their independence, discriminatory TPA to the network (preferential access being granted to incumbents with historical long term contracts), insufficient competences of the regulators, and lack of information given to the Commission. An additional obstacle to competition was the absence of a European regulatory framework addressing the challenge of investing in the right level of new infrastructure in support of the internal market (European Commission 2007a).

The Commission launched 34 infringement procedures against 20 Member States for violation and the lack of transposition of the existing Gas and Electricity Directives (ibid.). On the electricity wholesale markets, for instance, the three biggest generators still controlled more than 70% of generation capacity in 15 Member States. A moderate concentration of the electricity market (serving as evidence for more competition) was only given in eight Member States. The situation on the gas sector was even worse (as one might assume) - the gas sector, not only liberalised later then the electricity sector, but also showed more resistance to change as explained in the section on the First Gas Directive. Here, the three largest wholesalers controlled up to 90 % of the market share in 12 Member States. For electricity retail markets, 80 % in 14 Member States were controlled by the three largest companies, for gas retail markets, the market was only moderately concentrated in one Member State (Andoura et al. 2010).

5.1.4. The Third Energy Package

The Commission was determined to make use of all available means to limit the power of energy monopolies and to foster completion on the internal market. Neelie Kroes, the then Commissioner for Competition, was highly critical of the limited advancement achieved in terms of competition and blamed many of Europe's top gas and electricity companies. Kroes warned that she would make full use of her powers over mergers, government subsidies and anti-trust abuses to tackle the lack of competition in the sector (Agence Europe 2007a). Companies like RWE and E.ON in Germany, ENI in Italy and GDF in France had been subject to the Commission's anti-trust investigations, focussing on mergers, direct and indirect state aid and price-fixing. Hence, market concentration was a major obstacle for the success of the liberalisation process.

It was not only market integration that had failed to meet expectations, other concerns also had to be addressed. The EU was still short of an all-embracing regulatory framework that was suited to govern the different levels of energy policy. The challenges of climate change, increasing import dependence, and higher energy prices were all factors contributing to the need for a holistic approach to address energy policy in its entirety. From an HI perspective, these exogenous factors had an impact on the institutional trajectory and contributed to the creation of a new set of preferences within the institution. Moreover, due to the increasing interdependence and interconnectedness of Member States in the energy sector, a power failure in one country had immediate effects on the supply situation in other countries (European Commission 2007e).

Therefore, in January 2007, the Commission envisioned a reinforced institutional path by determining a new set of *intended goals*, which, as elaborated in detail in the theory section, is part of the institutional policy cycle.

The communication ‘An Energy Policy for Europe’ included a vast package on energy and climate change, including many proposals to transform the Union into a low carbon economy in the long term. In total, 10 documents were issued, including two on the internal market. Then President of the Commission Jose Manuel Barroso emphasised that he fully supported “the emergence of a post-industrial revolution to make the Union into a low carbon economy” (Barroso as cited in Agence Europe 2007b: 1). Within the overarching goal to fight climate change, the Commission proposed an integrated common energy policy on the basis of three central pillars: promoting growth and jobs through an integrated energy market, combating climate change, and limiting the EU’s external vulnerability to imported hydrocarbons (European Commission 2007e). In order to underline the urgency of a common approach, and to emphasise that the issue of a common energy policy facilitating secure and affordable energy was on the table for already more than 50 years (and agreed upon but not realised), the document started with a quote from the Messina declaration of 1955 (which was analysed in the Chapter III). Similar to the Commission’s working document *The Internal Energy Market* (European Commission 1988), in which the Commission used a quote from the 1960s to emphasise the inertia that the institution was subjected to, the document reminded the Council that if a common energy market were not achieved, deeper integration in this sector may severely be jeopardized. Based on the Messina Declaration, the Communication prominently stated that,

> "(t)o these ends, the ministers have agreed on the following objectives:... putting more abundant energy at a cheaper price at the disposal of the European economies..." (Messina declaration as cited in European Commission 2007e: 3).

According to the communication, and as a consequence of the slow advancement of liberalisation of the energy markets evident in the vast amount of infringement procedures against Member States, the Commission issued new proposals in September 2007, which addressed the shortcomings of the

Second Energy Package. The assessment of the *policy outcome* based on the *policy output* highlighted several shortcomings in the effectiveness of the policy regime. Existing unbundling measures were not successfully ensuring a well-functioning energy market. Although several Member States created a totally separate company for network operation, others opted to create a legal entity within a vertically integrated company. The former ensured the transmission operation was neutral, however, where the TSO was a legal company within a company, several issues arose. The reasons were threefold. Firstly, the TSO was prone to treat its affiliated companies better than competing third parties, or as a matter of fact, even tried to make market entry for new participants harder. Legal and functional unbundling was simply not enough, as the independence of the TSO was impossible to monitor without intrusive regulation. Secondly, non-discriminatory access to information could not be guaranteed as there was no effective means of preventing TSOs communicating market sensitive information to the generation or supply branch of the integrated company. Lastly, investment incentives were distorted as vertically integrated network operators had no incentive to further create network capacities in the overall interest of the market and, hence, facilitating market entry by competitors; quite the opposite, under such circumstances, the integrated companies limited investments benefitting their competitors and were disinclined to increase interconnection or gas import capacity (European Commission 2007b-d).

In order to overcome these shortcomings, the Commission made it clear that their preferred option was full ownership unbundling regarding network operations. Barroso warned that, “the less ambitious we are in terms of separation, the more ambitious we will have to be for regulations” (Barroso as cited in Agence Europe 2007b: 2). This meant that, unlike in the Second Energy Package, which required the legal and functional unbundling for Transmission System Operators (TSOs) from any other parts and activities of a vertically integrated undertaking, the new proposal endorsed that the same person or persons could not exercise control over both a supply undertaking

and over a TSO or a transmission system (or vice versa). Nevertheless, based on the diverse preconditions that existed between Member States, the Commission also proposed an alternative option for Member States – they could opt for a so-called 'Independent System Operator' (ISO). Opting for this model meant that vertically integrated companies could retain ownership of their network assets, but it required that the transmission network itself should be managed by an ISO – an undertaking or entity that was fully separate from the integrated company. The ISO was tasked with performing all the functions of a network operator and should be monitored permanently based on a regulatory framework. The Commission emphasised that, although progress towards Ownership Unbundling (OU) was more advanced in the electricity sector, the two options should apply to both the electricity and the gas sector. Moreover, publicly as well as privately owned companies should be affected by the new legislation (European Commission 2007b-d).

The proposals required the effective unbundling of TSOs and supply and production activities on both the national and EU level. In addition, in terms of third country access, addressing the external dimension of internal market provisions, the proposals made it clear that the same rules of unbundling would also apply to non-EU companies. The Commission wanted to ensure that the proposals translate into legal provisions that create a market environment in which all participants respect, and act in accordance with, incumbent market investor principles. Hence, companies from third countries would have to fully comply with the same legal regulatory system as EU-based undertakings and, as a consequence, EU-wide market integration would be further facilitated and competition would be promoted. To this end, the Commission proposed that third country individuals and third countries could not acquire control over a Community transmission system or TSO unless it was permitted by an agreement between the EU and the third country (ibid.).

From an HI perspective, the evolution from the First to the Third Energy Package, evident in both the subject matter of *intended goals* and the *policy*

output, fully supports claims about incremental change and the establishment of an institutional environment where Member States are exposed to unintended consequences. Although it took 10 years to formulate ambitious policy proposals regarding the opening of energy markets, Member States had to deal with policy proposals they would never have previously considered. An assessment from an HI perspective suggests that, the institution itself shaped the preferences of the actors and constrained their possible policy choices, as opposed to an analysis based on a pure rational choice approach in which actors always have primacy regarding their institutional decisions. In this vein, the institution shaped available policy options: policy proposals that would have been politically inviable a few years earlier were now up for discussion. Member States had to negotiate policy instruments some of them would not have seen as a possible policy option after signing the SEA, substantiating the claim that unintended consequences unfold over time.

Another very important policy development in regard to institutional stability and the continuation of the institutional path was the proposal for the creation of an Agency for the Cooperation of Energy Regulators (ACER). North (1990) argues that once an institution is established, learning effects apply due to the opportunity set provided by institutions, and coordination and expectations will be 'streamlined' as the prevalent contractual environment creates stability (ibid.). The proposition to create ACER serves as evidence for such coordination effects of established institutions as the regulatory agency was meant to "complement at European level the regulatory tasks performed at national level" (European Commission 2007d: 11) and "play a crucial role in the development and implementation of European gas and electricity market rules" (ibid.: 12). Path dependent processes and incremental change were also prevalent as the agency built on a previous institutional setting, the 'European Regulators Group for Electricity and Gas' (ERGEG).

This independent advisory group on electricity and gas was established by the previous energy package in 2003 and was tasked with facilitating consultation,

coordination and cooperation between the national regulatory authorities in the Member States. However, based on increasing returns - the notion that due to the institutional matrix and heightened interdependence the political and economic output of an institution is disproportionally increased – institutional capacities to regulate energy markets had reached its limits. The Commission stated that the energy sector had become “more complex and detailed, and involve[d] to a greater extent different financial interests” (European Commission 2007d: 10). Therefore, ERGEG was not suited to deploy the necessary regulatory capacity. A solution to the shortcoming was conceived in the form of the ACER. ACER was meant to provide a framework for national regulatory agencies (NRAs) to work together and to streamline their respective ‘grid-codes’, the national technical and market codes that electricity and gas companies must operate under and which differed considerably between Member States. The Commission itself considered these tasks outside its remit and did not have expertise in such activities. Moreover, the Commission had no legal rights to call upon the staff of NRAs to make the necessary amendments to the grid codes of the Member States. Therefore, the agency was conceived as a separate institutional body to facilitate the alignment of network codes - independent and outside of the Commission, and consisting of the different NRAs of the Member States in form of a Regulatory Board.

Regarding the measures proposed by the Commission, a significant number of Member States held the view that effective separation of supply/generation activities from transmission network activities could be best achieved through Ownership Unbundling (OU) of the TSO (Council of the European Union 2007). These Member States believed that OU was the best way to overcome the problems that arose when the TSO is a legal entity within an integrated company (ibid.). According to Batzella (2018), who did an extensive study on the preferences of the different Member States regarding OU of gas markets, United Kingdom, Belgium, Sweden, Denmark, Finland, Portugal and Spain were all in favour of unbundling to break vertically integrated companies and to boost competition on European energy markets. The countries in favour of

OU also did not show any concern in terms of the third country aspect (the requirement that companies of third countries cannot control a transmission system or a TSO unless agreed to at EU level). The United Kingdom, for instance, pointed out that OU would not have allowed upstream companies or third country supplier companies to control the network in the Member States (ibid.).

However, several Member States questioned “the proportionality of the proposed provisions for ownership unbundling or ISO” (Council of the European Union 2007: 4) as they deemed the measures infringed on property rights. Hence, they suggested an alternative to these two options “without interfering with property rights and in line with the European Council conclusions” (ibid.). Germany, Austria, Bulgaria, France, Greece, Latvia, Luxembourg and Slovakia sent a letter on 30 January 2008 containing their ‘third way’ addressed to the Slovenian presidency of the Council of the EU and the European Commission (Agence Europe 2008a). According to the eight Member States who opposed radical liberalisation, ‘Effective and Efficient Unbundling’ (EEU) was an alternative approach to OU and the ISO option that would be better suited to ensuring competition. Instead of requiring that the TSO had to be fully ownership unbundled, the EEU proposal suggested a set of measures in order to guarantee free access to infrastructure and the independence of investment decisions of the TSO (Agence Europe 2008a). These measures would have gone much further than the legal unbundling provisions set by the second internal market package, as they would have imposed strict obligations monitored by a compliance officer and public authority (ibid.). The rationale behind this alternative option was based on the fear of some Member States that OU would weaken the position of their national companies in relation to those of third countries. France in particular was anxious about such developments (Batzella 2018). Germany was also a fierce opponent of further unbundling, as it regarded such obligations would infringe on property rights, due to the specific nature of transmission systems in Germany, which were privately held (Del Guayo et al. 2010). France and

Germany led the faction of Member States who regarded EEU as their preferred alternative (Agence Europe 2008b).

A third group of Member States were also against OU but did not join the group of Member States proposing an alternative option, included Cyprus, the Czech Republic, Estonia, Ireland, Lithuania, Poland, and Slovenia. They were concerned that OU would have a negative impact on their gas markets, because they were not properly interconnected, with centralised and limited gas markets, or were heavily dependent on one external supplier (ibid.).

Interestingly, and very much detrimental to the side opposing OU[7], the large German energy utility E.ON announced in February 2008 that is was selling off its power grid to an operator that had no interest in the generation of electricity. This decision came after an investigation into the energy sector conducted by the Commission (DG COMP), which concluded that E.ON was guilty of anti-competitive behaviour. To avoid a large fine, the largest electricity utility in Germany planned to sell its transmission network, whereby the Commission would suspend its anti-trust procedure (Agence Europe 2008c). Germany criticised the behaviour of the Commission, presuming that it was in reaction to the proposed Effective and Efficient Unbundling (EEU) approach. Similarly, the German electricity giant RWE announced in May 2008 that it was selling its German gas distribution network, in response to an investigation launched by the Commission in May 2007, in order to improve competition conditions on the German gas market (Agence Europe 2008d). Hence, endogenous momentum was created by large private actors who were in favour of the suggested provisions of the Commission. Andris Piebalgs, then Commissioner for Energy, pointed out that the Commission was willing to negotiate EEU under the condition that strict guarantees were respected, because as it stood, the 'third way' (EEU) did not guarantee independence of the TSO and non-discriminatory access to the network. In addition, the

[7] The group spearheaded by France and Germany.

Commission emphasised that effective unbundling must apply to both electricity and gas (ibid.).

From an HI perspective, the institutional design entrenched various actors and constrained the possible range of policy options available to them. In this case, although Member States were still in the process of negotiating new institutional rules, structural preconditions determined possible policy choices, which were also reinforced by powerful agents in the private sector. The Commission did not rule out EEU and the 'third way' *per se*, but made it clear that certain commitments to liberalise energy markets (for both electricity and gas) had to be fulfilled. Member States had heterogeneous preferences regarding OU: some demonstrating fierce opposition or a great deal of scepticism. Nevertheless, their preferences were eventually constrained and altered by institutional boundaries. Hence, as HI would suggest, institutions both constrained actors and shaped their preferences.

On 06 June 2008, the Energy Council agreed on the key points of the Third Energy Package, reaching a consensus on the effective unbundling of production/supply and network/transmission activities. The Council reached a compromise regarding the modalities of an alternative to ownership unbundling – the ITO (Independent Transmission Operator) model which allowed vertically integrated companies to keep ownership of transmission networks on the condition that they were managed by an independent TSO, adhering to a strict set of conditions. The Council decided that this option should be available for both the electricity and gas sector. Two unresolved issues remained: a clause on fair competition (creating a level playing field) and the 'third country clause' (or 'Gazprom clause'), which was finally resolved in October 2008 (Agence Europe 2008e).

As the Council and the European Parliament had different views on the proposals, informal talks were held between the Council, the European Parliament, and the Commission. For instance, the Parliament rejected the

Commission's ISO option and endorsed the ITO model, however, incorporating a requirement that an independent Trustee should be appointed by the regulatory authority to safeguard the independence of the TSO. The Council, on the other hand, endorsed all three options – full Ownership Unbundling, the option of an Independent System Operator, and the option of an Independent Transmission Operator. Moreover, the Council did not endorse the appointment of a Trustee regards the ITO model. In terms of the third country aspect, the Council introduced a new article which ensured that TSOs of third countries had to respect the same unbundling rules as Community TSOs. The article also introduced the requirement that the security of energy supply should be taken into account when deciding whether a third country TSO could operate in the network of a Member State (Batzella 2018).

In the end, ownership unbundling became the main stumbling block for reaching an agreement, discussions in second reading became bogged down at the beginning of 2009. However, during a final European Parliament / Council / Commission trilogue, the five rapporteurs for the Third Energy Package reached an informal compromise, under the Czech presidency in late March 2009. The Parliament came into line with the political agreement of the Energy Council of October 2008, endorsing all three options of unbundling for the electricity and gas sector, however, obtaining additional provisions for the third option (ITO), in order to ensure the independence of the TSO on investment and governance. Moreover, the Parliament also obtained additional provisions to ensure greater independence of national regulators and managed to have consumers' rights strengthened (Agence Europe 2009a). Finally, at the second reading in April, the Parliament agreed to the amendments concerning the five texts of the legislative package by a large majority. The vote in the Parliament validated the informal compromise that was reached in March (Agence Europe 2009b).

Hence, after almost two years of intense negotiations, the Council formally adopted the Third Energy Package on 25 June 2009 and approved all the

amendments adopted by the Parliament (Agence Europe 2009c). The legislative package was then published on 14 August 2009 (EP/Council 2009b-f).

As previously noted, the most important (and controversial) aspects during the negotiations were Ownership Unbundling (OU) and third-party access. The final *policy output* provided the following provisions. In terms of unbundling, the first choice Member States can opt for is full ownership unbundling, as suggested by the proposal in 2007, which was also the preferred option for the Commission. As explained, under this regime, Member States have to ensure that the same person or persons are not allowed to exercise control over a production or supply undertaking and at the same time exercise control over a TSO or a transmission system (EP/Council 2009b, 2009c). The second option is to designate an Independent System Operator (ISO) upon a proposal from the transmission system owner. Under this model, the vertically integrated undertaking can retain its ownership of network assets but must leave the entire operation, maintenance and investment to an independent company (ibid.). The last option – the 'third way', as advocated by Germany and France and six other Member States - also grants the vertically integrated company the option to keep its gas or electricity networks but must leave operation to a subsidiary. An Independent Transmission Operator (ITO) should be tasked with such undertakings. The ITO would allow the TSO to remain part of the integrated undertaking but would provide for very detailed rules to ensure their independence (Del Guayo et al. 2010). The ITO must have effective decision-making rights, independent from the vertically integrated undertaking, with regard to assets required to operate, maintain and develop the transmission system. In addition, the ITO should have the power to raise money on the capital market in particular through borrowing and capital increase (EP/Council 2009b-c).

In terms of third party access, national regulatory authorities (NRA) are responsible for the certification if a person or persons from a third country or

third countries want(s) to acquire control of a transmission system or the transmission system operator. The NRA can refuse permission if an undertaking does not fulfil general requirements for unbundling and does not comply with Community law. Certification can also be withheld if the security of energy supply of the Member State or the Community's energy supply is threatened. In any case, the NRA must inform the Commission about its decision and request an opinion from the Commission. Subsequently, and before adopting a final decision, "the national regulatory authority shall take utmost account of the Commission's opinion" (EP/Council 2009b: 108; EP/Council 2009c: 70).

In addition to OU and third party access, the creation of an Agency for the Cooperation of Energy Regulators (ACER) was the third very important institutional change introduced with the third liberalisation package. According to the regulation, the agency should act independently from any market interests, the Commission, Member States and any public or private entity. The Agency was conceived as a means "to fill the regulatory gap at Community level and to contribute towards the effective functioning of the internal markets in electricity and natural gas" (EP/Council 2009d: 2). ACER should ensure that regulatory functions conducted by the NRAs concerning the common rules for the internal market in gas and electricity are properly coordinated and, where necessary, completed at the Community level. Regulation (EC) No 713/2009, establishing ACER, states that the agency has to be independent from electricity and gas producers, transmission and distribution system operators, and consumers, and has to ensure the conformity of its actions with Community law (ibid.). It should monitor regional cooperation between TSOs in the electricity and gas sectors as well as the performance of the European Network of Transmission System Operators for Electricity (ENTSO-E), and the European Network of Transmission System Operators for Gas (ENTSO-G). Participating in the development of network codes, monitoring the implementation of these codes, analysing the progress regarding the creation of new interconnector capacity and monitoring the implementation of

Community-wide network-development plans fall within the remit of the ACER. Indeed, ACER was conceived as a new powerful institutional node which enhanced the regulatory capabilities of the institution matrix considerably.

Another important task of the agency addresses the facilitation of cooperation between NRAs and between regulatory authorities at regional and Community level. Moreover, ACER is tasked with monitoring the performance of the internal markets in electricity and natural gas (in particular the retail prices), access to the network (including access to electricity produced by renewable energy sources), and compliance with consumer rights (EP/Council 2009d). By creating new institutional nodes, like the ACER, ENTSO-E and ENTSO-G, the institutional matrix was widened, conferring important institutional functions to these structures. Their operations, in the shape of coordination processes, are an integral part of path dependent processes based on increasing returns, and help to shape and monitor the implementation of the *policy output*. Coordination helps to overcome collective action problems (Pierson 2000).

To complement the assessment of the Third Energy Package, the European Network of Transmission System Operators for Electricity (ENTSO-E), and the European Network of Transmission System Operators for Gas (ENTSO-G) also offer interesting insight. The inception of ENTSO-E and ENTSO-G were a means to increase cooperation between TSOs and to ensure the optimal management of the gas and electricity transmission networks in the Community, ultimately creating a pan-European transmission system. Both associations were tasked with creating "network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment" (EP/Council 2009e: 37; EP/Council 2009f: 15). The regulations set out: non-discriminatory rules for access conditions to natural gas transmission systems; rules for cross-border exchanges in electricity (thus

enhancing competition); rules for access conditions to LNG facilities and storage facilities; and facilitate the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and electricity. Regarding the network codes, upon request from the Commission, ACER is tasked with the development of a framework guideline setting out clear and objective principles which are based on a priority list created by ACER, ENTSO-G&E (hereafter ENTSO) and relevant stakeholders. Based on this framework, ENTSO is tasked with delivering a network code, which is in line with the relevant framework guideline. ACER subsequently reviews the code, during which it might consult relevant stakeholders. Based on the position of the Agency, ENTSO amends the code accordingly and re-submits it to the agency. Once the Agency is satisfied, it submits the code to the Commission and may suggest that it be adopted within a reasonable time period (ibid.).

The so-called network codes are sets of very complex operational and technical rules to facilitate coordination and harmonisation, integration and efficiency of European energy markets, and to develop these further. These rules can be regarded as the 'software' upon which cross-border trade depends; they are the set of institutional rules that increasingly bind actors to the regulatory framework of the institution, as they are required to internalise these new standards and guidelines. As decision-making, operational, and technical standards converge over time, and as actors become part of a connected energy grid, adaptive expectations unfold as actors endeavour to maximise their benefits according to their investment. Network codes (the ones that are developed at this point), are grouped into code families. For instance, ENTSO-E clustered them into *Connection Codes* (Demand Connection Code, High Voltage Direct Current Connections, Requirements for Generators), *Operations Codes* (Operations, Emergency and Restoration), and *Market Codes* (Electricity Balancing, Forward Capacity Allocation, Capacity Allocation & Congestion Management) (ENTSO-G n.d.). Similarly, ENTSO-G has network codes (NCs) for capacity allocation, balancing, interoperability and

data exchange, congestion management, transparency guidelines, functionality processes to reach solutions regarding operational and implementation issues, and NCs for monitoring processes (ENTSO-E n.d.).

From an HI perspective, the development of these codes, the 'software' the energy grid is governed by, supports the assumption that over time, the institutional structure is not only widened by new institutional nodes, but also deepened with stronger institutional rules. Without going into too much detail, these network codes deliver a very powerful regulatory regime to align operational and procedural standards of the different TSOs, assure that the completion and the functioning of the internal market is promoted, that cross-border trade runs as smoothly as possible, and that the rules for access to transmission systems are set in a non-discriminatory manner. Moreover, in order to provide an overview of existing infrastructure and the integrated network, and to provide an institutional platform for further operational and infrastructural development, both ENTSOs are required to develop non-binding Community-wide ten-year network development plans (TYNPs) on a biannual basis. As we can see, the new institutional design did not only govern and monitor the existing trajectory, but also set options for possible institutional development in the future. The network development plans, which cover a ten-year horizon, should build on national investment plans, taking into account regional investment plans and Community aspects of network planning; integrate long-term commitments from investors regarding cross-border interconnections; and identify investment gaps of infrastructure planning (EP/Council 2009e; EP/Council 2009f). In a nutshell, the objective of the TYNPs is to describe the foreseen developments of the European transmission capacities, whilst assessing the ability of transmission operations to meet the requirements of the energy market to satisfy demand and to provide a secure supply of energy (ENTSO-G 2010; ENTSO-E 2010).

Based on the evidence, the Third Energy Package improved the institution structurally, and widened and deepened the institutional design after the

adoption of a large set of operational, technical, and economic rules. The package introduced signifiant provisions regarding the governance of both the electricity and the gas sector. Provisions addressing ownership unbundling, third country aspects, the creation of a new agency and associations, and the development of network rules all contributed to a more coherent policy package governing the internal market for energy, and reinforcing the institutional path. Comparing the *policy outcome* of the First, the Second, and then the Third Energy Package, reveals that institutional change happened in a stepwise manner. A bigger institutional step was taken between the First and the Third Package (and even more so, between the Third package and the time before the SEA). However, if we compare the First to the Second, and the Second to the Third package, it becomes apparent that the institution was gradually modified and the institutional matrix expanded. This, therefore, supports the third hypothesis that in the absence of a critical juncture within an institution subjected to low stickiness, a process of moderate integration can be observed. Change to the institutional makeup - manifesting itself in the form of the three liberalisation packages - was not achieved by completely and abruptly overhauling the institutional design. Rather, the institution matrix changed incrementally. Hence, when measuring the DV as the difference between *policy outcomes* in different points in time, moderate integration can be attested. Thus, the third hypothesis can be confirmed:
H3: If no critical juncture occurs in a setting of low institutional stickiness, moderate integration can be expected. Integration will occur in the form of incremental change of secondary legislation.

The rationale for the creation of the internal market was based on economic considerations. The preferences of the different actors concerned can be reasoned through the calculus approach, with the notion of rational choice decision-making. However, we have also shown that endogenous momentum was present to alter institutional rules. Rules can be based on strategic calculations (see Shepsle 2006) or they can be of normative origin - put differently, they can be based on *ideas* of how specific aspects of the political

sphere (see Eising 2002) or how markets should be governed (Hall & Lamont 2013). The decision to agree to the SEA, and consequently to the SEM programme, was based on the calculus approach, reinforced through endogenous ideas of how to achieve a single European market. As suggested by HI, actors had initial primacy regarding their decisions in the institutional context. However, as we have shown, over the subsequent years, and although the primacy of actors in terms of the range of possible policy choices was initially high, these specific decisions slowly entrenched the different actors, over time, due to the structural institutional design. Eventually, their policy choices became more and more constrained. Unintended consequences unfolded due to initial policy choices (to liberalise the markets with the help of specific policy instruments; to strengthen certain procedural rules; etc.). These specific policy instruments gradually evolved, in some instances to a degree that actors might not have anticipated at the point of their inception. These policy measures became more and more stable and rigid over time. For instance, in the proposal of the Commission regarding the First Gas Directive, the Commission suggested complete ownership unbundling, a proposition which, at the time of the implementation of the directive in the late 1990s, was inconceivable and foredoomed to failure. However, ten years later, ownership unbundling became a reality, together with the choice to opt for an Independent System Operator (ISO) or an Independent Transmission Operator (ITO).

5.2. The external Dimension of Energy Policy in the 2000s

After the implementation of the SEA, and the creation of an internal market for energy based on the SEM, the EU “mainly used liberal tools to a liberal effect—in building and extending the Single Market for energy” (Andersen et al. 2017: 21). Energy policy was not formally incorporated within the pillar of the Common Foreign and Security Policy and no legal basis existed for the development of a common external policy (Youngs 2009). Consequently, other

than the areas of energy policy that fell within the remit of the internal market, decisions had to be made unanimously, hence, were exposed to high institutional stickiness. At the same time, the internal dimension demonstrated low institutional stickiness and was subject to incremental change. Based on path dependent processes and increasing returns, adaptive expectations, coordination effects and continuous monitoring, moderate integration of the institutional matrix was possible. The analysis of the three liberalisation packages, and the incremental institutional change they facilitated, serve as evidence of these assumptions. The packages did not introduce rapid bursts of policy innovation, but rather a stepwise transformation of the institution towards deeper integration.

As the Community did not have formal competence regarding the external dimension of energy policy, the only viable approach to address relations with third countries was via internal market provisions. Hence, policy provisions regarding the security of supply could only be subsumed under the umbrella of the liberal market doctrine and had to be incorporated within the framework of the liberalisation packages. Unlike at the time of writing, when the "EU-Russia political relationship is … at its lowest ebb since the end of the Cold War" (Judge et al. 2016), geopolitical concerns and supply shortages from Russia were not on the table, and the Community considered "a certain increase in dependence on that country" (European Commission 2000: 44) as inevitable. Supplies from the former Soviet Union, and in particular Russia, where considered a "testimony to an exemplary stability" (ibid.). Hence, the market paradigm was conceived as a means to address the security of supply[8].

At the end of the 1990s, the Union came under more and more pressure, as the price of crude oil rose significantly (it tripled within a year from 1999 to 2000), due to the growing energy dependence of the EU as well as the

[8] For instance, Directive 96/92/EC concerning common rules for the internal market in electricity, which was part of the first liberalisation package, stated that "the internal market in electricity is particularly important to increase efficiency in the production, transmission and distribution of this product, while reinforcing security of supply" (EP/Council 1996).

forthcoming Eastern enlargement. Within this context, the Commission published the Green Paper titled *Towards a European strategy for the security of energy supply* (European Commission 2000). Energy Security was now considered an important issue that needed to be properly addressed to ensure the well-being of EU's citizens and the proper functioning of energy markets and the economy, the uninterrupted physical availability of energy products on the market, at a price that is affordable for all consumers, while at the same time addressing environmental concerns and achieving sustainable development. The Commission warned that without an active common energy policy, energy requirements covered by imported energy products would rise from 50% in 2000 to 70% in 20 to 30 years. From an economic standpoint, costs were heavy: 45% of oil imports came from the Middle East and 40% of natural gas from Russia, which cost the Union about 240 billion Euros in 1999, and accounted for 6% of total imports. The Commission warned that the EU had too few resources and lacked instruments at its disposal to tackle the issues of import dependence and the erratic increase of oil and gas prices. Hence, a coherent energy policy at Community-level should be promoted (ibid.).

The Green Paper initiated an intense debate in the different Member States about the structural weaknesses and geopolitical, social and environmental shortcomings of the EU's energy supply (European Commission 2002). The conclusions from a consultation of Member States, companies, consumer associations and NGOS, which asked 13 questions as part of the Green Paper was virtually unanimous in its understanding that energy consumption must be steered. Energy demand management – demand-side management (DSM) - was seen as key to improving energy security and bringing down overall energy consumption. The Commission instantly made some well-received proposals "involving actual legislation and not just encouraging words or exchange of good practice" (ibid.: 3-4), addressing electricity production from renewable sources, energy saving in buildings, and the promotion of biofuels. Based on the applied theoretical model, a new set of *intended goals* was

defined. However, in terms of supply strategies and how to effectively approach third country suppliers, other than in the area of DSM, the conclusions were rather vague, suggesting that the dialogue with Russia would determine the best way to deal with long-term supply and production agreements, as “representatives of the industry expressed some major concerns” (ibid.: 4).

It took another two years to implement the first advancement in terms of legal provisions addressing gas security. Directive 2004/67/EC, concerning measures to safeguard security of natural gas supply, published on 29 April 2004, introduced the initial steps that directly addressed the external dimension of energy policy and set out the path for further institutional development (Council of the European Union 2004). However, from an HI perspective, the directive can be regarded as a small step rather than a huge leap towards the successful implementation of effective provisions addressing security concerns. In contrast to the packages on market liberalisation, which were decided by the co-decision procedure between the EP and the Council, the directive addressed the external dimension of energy policy, which was not within the remit of the Community, and was therefore decided in the Council.

Article 100 EC (under the “Approximation of Laws” chapter), was the legal basis for the directive, which required the Council, on a proposal from the Commission, to decide unanimously, after consulting the European Parliament and the Economic and Social Committee. The security directive was reasoned through the “completion of the internal gas market”, which necessitated “a minimum common approach to security of supply” (Council of the European Union 2004: 92) and the concomitant need for an undisrupted supply of gas to ensure the functioning of the internal market, safeguarding economic activity and avoiding market distortions. However, due to the requirement for a unanimous vote, it only constituted the smallest common denominator, as Member States would merely have to “specify adequate minimum security of supply standards” (ibid.: 93). Overall, the directive was formulated quite

vaguely and policy instruments were not exhaustively discussed. Other than framing an effective policy on a supranational level, the directive claimed that "[b]ilateral agreements between Member States could be one of the means to contribute to the achievement of the minimum security of supply standards" (ibid.: 92). The Commission was given a rather minor role: it should monitor the overall supply situation based on reports from Member States and was given auxiliary and administrative tasks.

5.2.1. External factors and their impact on the institutional trajectory

The reason why the policy was formulated in such a vague manner is owed to the fact that at the time of negotiating Directive 2004/67/EC, interruptions of the gas supply were unimaginable. Therefore, the Commission's first proposal was met with complete opposition and had to go through substantial amendments (Brutschin 2016). However, things changed when in March 2005 a gas dispute between Russia and the Ukraine started to unfold. Ukraine is not only the most important transit country for Russian gas, but also a significant gas producer itself. Both Ukrainian gas import prices and transit fees for Russian exports to Europe were set in bilateral agreements, and at prices below European levels. Throughout 2005, Moscow accused Kiev of refusing to negotiate seriously on prices and, in addition, Gazprom complained that 7.8 bcm of gas had disappeared from storage facilities in the Ukraine – the issue was ultimately resolved by paying for the gas. The peak of the conflict was the breakdown of negotiations on import prices for 2006. In the last three months of 2005, Gazprom officials insisted that Ukrainian import prices would be set at European levels, therefore causing the dispute to be unresolved on 1 January 2006 and leading to the suspension of gas supplies from 1-3 January (Pirani 2007).

The interruption of the flow of Russian gas to the Ukraine and the EU demonstrated that Directive 2004/67/EC and its uneven implementation by

Member States was not suited to sufficiently prepare for, and respond to, a serious gas supply crisis. In addition, there was a clear risk that measures that were taken unilaterally by Member States in response to the crisis could jeopardise the functioning of the internal market (Roggenkamp et al. 2016). As a direct and instantaneous consequence of the gas dispute, the so-called 'Gas Coordination Group' (GCG), which was actually introduced by Directive 2004/67/EC, met for the first time on 4 January 2006 (Agence Europe 2006a), although the directive would have required the group to exchange information on security of gas supply on a regular basis and "should consider aspects relevant in the context of a major supply disruption" (Council 2004: 93). The group included representatives from all Member States and was presided over by the Commission (Agence Europe 2006a). It was reinforced and structurally improved by a Commission decision in November 2006. The decision was meant to provide the EU with the means to speak with a single voice when discussing matters of energy security with third countries, facilitate the coordination of security of supply measures at Community level, and assist Member States in the event of a supply disruption in coordinating measures taken on a national level (European Commission 2006b).

Following the gas dispute between Russia and the Ukraine, an intense and serious debate about energy security in the EU was initiated, as gas supplies fell by 40% in Hungary, and by over 30% in Austria, Slovakia and Poland (Agence Europe 2006b). The Commission published another Green Paper titled 'A European Strategy for Sustainable, Competitive and Secure Energy', which was initiated by European Council summits in October and December 2005. The paper asked Member State to act urgently at a Community level, since unilateral measures and individual energy policies by Member States were not enough to tackle new challenges on energy markets. Therefore, new impetus was needed and the paper put forward different options to form a new comprehensive energy policy. Interestingly, alongside the need to complete the internal market (with the help of grid codes, better connected infrastructure, etc.), diversify the energy mix, and develop an integrated approach to tackle

climate change, the Green Paper also suggested the development of policy instruments that would enhance solidarity between the Member States in an event of a supply disruption and ensure assistance when a countries' infrastructure was damaged. The Green Paper additionally proposed the re-examination of existing legal provisions on the security of supply (for instance, Directive 2004/67/EC) (European Commission 2006a).

From a HI standpoint, it is interesting to see that the institution moved away from a pure market based approach to address supply disruptions towards one that also allowed for normativity. Incorporating 'solidarity' to tackle market failure serves as strong evidence that the institution and its associated markets, could not deliver solutions based on pure market instruments during a crisis. Here, markets do not sustain Member States' economies. During a supply disruption, it is quite the opposite. Member States' economies must help each other in order to sustain the markets. In the words of Stefan Moser (2018), Head of the Security of Supply Unit in DG Energy,

> "If you have a functioning energy market, necessary cross-border connections, and if energy markets run smoothly, you can to a large extent cope with a normal crisis. But you can never exclude that there is an extraordinary event where the market stops to work. And for this event you need instruments that must be fully based on solidarity between Member States. If not, everybody goes alone" (Interview 3, 2018).

As we can see, the *policy output* Directive 2004/67/EC addressing gas security and the external dimension displayed low effectiveness as it was not able to alleviate the impact of the gas dispute between Russia and then Ukraine in 2006. Secondary law, without being explicitly addressed in primary law and subject to QMV, will only reflect veto player's willingness to agree to the lowest common denominator. However, as the following chapter will show, the directive was overhauled and substantially improved based by the Lisbon Treaty, which bestowed the institution with extended competences to react to

exogenous threats. Indeed, the Lisbon Treaty changed the institutional environment for energy policy to a considerable degree. The following chapter will elaborate in detail how the Lisbon Treaty informed and impacted energy policy, and which policy instruments were proposed under the umbrella of the Energy Union.

Chapter VI: Another Critical Juncture and the Energy Union

In the last chapter, we discussed the impact of the SEA on the internal energy market, exogenous threats and security of supply issues, and identified some factors as the catalyst for institutional development. An initial analysis suggests that the Lisbon Treaty constituted a significant step for further institutional change. Therefore, in this chapter we will test the fourth hypothesis.

H4: If a situation of critical juncture occurs within a setting of low institutional stickiness, high integration can be expected. Integration will occur in the form of a non-incremental change of primary legislation. After the critical juncture occurred, the institution falls back into equilibrium and a process of moderate integration of secondary law can be expected.

6.1. The Lisbon Treaty

In the Lisbon Treaty energy policy was directly and explicitly addressed in primary legislation for the first time and had its own title (Title XXI). Energy policy was now one of the Union's shared competences. Decision-making is based on the ordinary legislative procedure (formerly known as co-decision), which means that neither the European Parliament nor the Council may adopt legislation without the assent of the other, and the Council takes decisions by QMV (Article 4). This has two important implications for decision-making. Firstly, "QMV essentially means Member States do not exercise veto power" (Birchfield 2011: 247), and secondly, as a vast number of policy areas are now subjected to the co-decision procedure, energy policy amongst them, "the EP has essentially obtained veto power" (ibid.: 250). Before the Lisbon Treaty came into force, the EU had no legal competences in formulating energy policy and energy issues were addressed through linking energy policy with

provisions regarding the internal market (Article 95 EC), competition provisions (Articles 81-88 EC) and environmental protection (Article 175 EC) (Vedder 2010). Although energy legislation was implemented under internal market and environmental considerations, with the adoption of an energy chapter in the Lisbon Treaty, energy policy became a *formal competence*. This meant that "no longer could initiatives by the Commission be questioned as lacking a legal basis" (Duffield & Birchfield 2011: 6).

The Lisbon Treaty set out four overarching goals for the EU's energy policy. Article 194 states that,

> "[i]n the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (a) ensure the functioning of the internal market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks" (Lisbon Treaty 2007).

Furthermore, Article 122 stipulates that the Council, based on a proposal by the Commission and "in a spirit of solidarity between the Member States" (ibid.), might take measures to mitigate repercussions if severe difficulties arise in the supply of certain products, especially in the area of energy. This provision confirmed the Union's competence to take preventive measures if issues of the security of supply arose and strengthens the Union's ability to react to security threats. Hence, far-reaching measures could be expected in the case of a threat to supply security, based on Article 122, and executed in a spirit of solidarity (Braun 2011: 2).

Regarding trans-European networks, in order to create an area without internal frontiers, Article 170 requires the Union to contribute to the establishment and the development of networks in the area of energy, and to promote the

interconnection of national networks and the free access to such networks (Council of the European Union 2007). Poland insisted on a new energy solidarity clause, representing one of its threats to veto a new Treaty mandate. However, the reference to energy policy needing to be in accordance with “a spirit of solidarity between Member States” was less committal and specific than Poland had wanted (Youngs 2009, Talus 2013).

As we can see, the Lisbon Treaty codified a number of significant aspects of energy policy. However, Article 194 also “entails prominent legal shortcomings” (Braun 2011: 2) and "provides a somewhat double edged sword in the sense that it both strengthens the EU’s competence and confirms the fact that responsibility for the energy mix is firmly at the national level” (Van Hulten & Sitter 2017: 225). This shortcoming is owed to the fact that Article 194 specifies that a Member State retain its right “to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply” (Council of the European Union 2007). Hence, Member States retain their right to conduct their bilateral energy relations with third countries as they deem appropriate (Braun 2011.). Furthermore, measures in the field of energy taxation are subject to unanimous voting in the Council (Council of the European Union 2007), and the Parliament’s role in the decision-making process is only advisory in nature (Van Hulten & Sitter 2017). The energy title in the Lisbon Treaty can be understood as a codification of the distribution of energy policy between EU institutions and Member States (ibid.). As Andoura et al. (2010) explain,

> “[t]he final text of the Energy Title is a carefully crafted compromise between national sovereignty over natural resources and energy taxation on the one hand and shared EU competence for other areas on the other” (Andoura et al. 2010).

Despite the shortcomings, the Lisbon Treaty paved the way for secondary legal provisions that, without the appropriate legal basis, would have been very difficult to realise. Dr Dieter Borchardt, Deputy Director-General of the

Directorate General Energy (DG ENER) at the European Commission, emphasises the importance of the Lisbon Treaty, stating that,

> "Article 194 is a game changer in the sense that this is our basic legal basis for all the legislation, all the measures that we are taking. The result of that was the security of supply Regulation 994/2010. Which now has been revised. When the gas crisis in 2009 happened, then immediately the Commission had to make a proposal in only 6 or 8 months after the crisis and the directive was there. And it made already a difference when we came to 2014, we were also on the edge of a gas crisis. 994/2010 needed Article 194 in the Lisbon Treaty because otherwise we would not have the legal basis to take these measures" (Interview 11, 2018).

As the empirical evidence suggests, high integration in the form of non-incremental change of primary law can be attested. When comparing the Lisbon Treaty to the SEA, the SEA displayed moderate integration, providing the institutional means to incrementally alter secondary law concerning the internal dimension of energy policy. However, it proved to be incapable of effectively addressing the external dimension of energy policy as evident in the policy outcome of Directive 2004/67/EC (Roggenkamp et al. 2016) to safeguard the security of supply during the first gas crisis of 2006. The Lisbon Treaty, on the other hand, provided the Commission with legal tools that went beyond addressing the internal market, and equipped it with the means to address the external dimension more directly (Braun 2011). Hence, we will now turn towards an assessment of secondary legislation that enhanced the regulatory regime of external energy policy substantially, before analysing the proposals for the Energy Union.

6.1.1. Regulation 994/2010

Although Member States were aware of the potential risks posed by supply disruptions, it took an additional gas dispute between Russia and the Ukraine as a serious external shock to reach agreement between Member States and implement a regulation addressing the security of supply of natural gas. In fact, in January 2009 gas flows from Russia to the EU via the Ukraine were once again interrupted due to an unresolved commercial dispute between Naftogaz (Ukraine) and Gazprom, and outstanding payments from the Ukraine, which gradually built up from late 2007 onwards. On 2 January 2009, gas deliveries to several Member States were affected, amongst them Poland, Slovakia, Hungary, and most significantly Bulgaria and Romania. The situation intensified over the following few days, culminating in all gas deliveries to the EU being stopped from 6-20 January 2009, engulfing the EU in a grave energy crisis (European Commission 2009). The major obstacle to responding to the severe situation was a lack of important technical information about gas systems and gas flows on a national and EU level. There was simply not enough reliable information about gas flows, how much gas was in the system, and about demand patterns. The situation was a result of the qualitatively different systems that existed across Member States, with unequal access to information by different market players, stakeholders, and public authorities. As the Third Energy Package was just recently adopted, which included an obligation to publish data on gas flows and other technical information, no provisions regarding this sort of data had yet been put into practice, exacerbating the crisis (ibid.).

As a direct consequence and response to the stark gas crisis, Regulation (EU) 994/2010 concerning measures to safeguard security of gas supply was implemented under the Lisbon Treaty, and entered into force on 2 December 2010. The content was characterised by shifting more power and competences to EU level and was adopted as a regulation instead of a directive (like its predecessor). The role of the Commission was enhanced, the level of detail increased (especially when comparing it to Directive 2004/67/EC) and the coordination of various issues at regional and EU level was enhanced (Talus

2013). The fact that a regulation is legally binding at the date of its adoption and has to be applied in the same way across the EU, whereas a directive is a legal act that sets out goals to be achieved with leeway for Member States to decide how to achieve them, suggests that the EU needed to create a level playing field across Member states, removing all potential ambiguities.

As a recurrent motive in much of the new legislation adopted after the Lisbon Treaty, Regulation 994/2010 “buil[t] heavily on the solidarity approach” (Talus 2013: 805); it “formalize[d] the response mechanisms at state, regional, and EU level, all in the spirit of solidarity” (ibid.) Moreover, the institution had increased its capacities to react to exogenous factors: the Lisbon Treaty, which will be discussed at a later point, incorporated an article on energy policy (Article 194), entailing the provision to ensure the security of supply. As the empirical data suggests, in order to have the capacity to effectively react to exogenous events addressing the external dimension, primary law must address the policy area under concern and QMV must be the voting rule. Together with the two crises as exogenous factors, the institution now had the formal capacity to amend its trajectory more effectively.

The regulation sets out clear procedures and objectives to be met in order to enhance the security of gas supply and to strengthen the regulatory framework of the institution. The regulation established Preventive Action Plans (PAPs) and Emergency Plans (EPs) on both national and Community level, based on risk assessments, which were conceived to remove or mitigate identified risks (PAPs), and, in case of a supply disruption, the impact of such an incident (EPs). The risk assessments should be carried out by ‘Competent Authorities’, who were national governmental authorities or national regulatory authorities (NRAs), designated by each Member State by no later than 3 December 2011, and who should ensure the overall implementation of the measures defined in the regulation. The Commission should carry out continuous monitoring of the security of supply measures implemented by Member States, through Directive 2009/73/EC (concerning the internal gas market), and based on the

information provided by the risk assessments, the PAPs and EPs (EP/Council 2010). In addition, at the request of a Competent Authority, the Commission may declare a Union Emergency or a regional emergency for a specifically affected geographical region.

The regulation also reinforced the role of the Gas Coordination Group (GCG), consisting of representatives of Member States and their respective Competent Authorities, ACER, ENTSO-G (established by the Third Energy Package) and representative bodies of the industry. Compared with the first directive on security of gas supply, the remit of the GCG was increased to a large extent. For instance, GCG should be consulted by the Commission as the main body in regard to the establishment of the PAPs and EPs. For cross-border interconnections between Member States, transmission system operators (TSOs) should submit a proposal for bi-directional capacity concerning the reverse direction (reverse flow capacity) to their Member States or Competent Authorities. This means that gas could be transported in *both* directions, which would help shippers to swiftly re-route gas deliveries within the internal market if a supply disruption occurred. However, TSOs were also granted the power to request an exemption from the obligation to enable reverse flow capacities if: a) the reverse flow capacity would not significantly enhance the security of supply of any Member State, or b) the investment costs would offset the prospective benefits in terms of the security of supply.

In terms of infrastructure security requirements, Member States or the competent authority, had to ensure that the necessary measures were taken, so that by 3 December 2014 (at the latest), in the event of a disruption of the single largest gas infrastructure, the remaining infrastructure (determined by the so-called n – 1 formula) was able to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand (occurring with a statistical probability of once in 20 years). In addition, the regulation initiated an information exchange mechanism during a possible emergency (concerning the daily gas demand and forecast, and cross-border gas flows).

It also required Member States communicate existing intergovernmental agreements with third countries that had an impact on gas infrastructure and supplies (Council/EP 2010).

As Boersma (2015) contends, the overall impact of the regulation was moderate rather than a full success in terms of creating a coherent external energy policy. A unified understanding across Member States regarding a common standard of energy security did not exist. Perceptions of energy security differed between Member States, and so did the levels of their import dependence. As the HI framework would suggest, integration never happens in sudden bursts (unless in the event of a critical juncture), but institutions change incrementally. The empirical evidence would corroborate such assertions. The effectiveness of the *policy output*, the *policy outcome* of 2004/67/EC, was very low compared to the *intended goals*, but Regulation 994/2010 already improved the regulatory environment to a higher degree. The regulation starkly contributed to increased transparency and the overall level of information shared between the different actors (Boersma 2015). The Ukrainian crisis of 2014, and the geopolitical unrest caused due to the annexation of the Crimean Peninsula, induced the Commission to conduct a stress test in anticipation of a possible supply disruption. In general, Member States were much better prepared to face a supply crisis due to the Preventive Action and Emergency Plans, and the requirement to meet a supply and infrastructure standard (European Commission 2016p). Indeed, shortcomings still existed, and the Commission addressed these in a new proposal for a regulation concerning the security of gas supply within the Energy Union package. However, we will discuss these measures in more detail later in the chapter.

Compared to the first directive concerning measures to safeguard security of gas supply, Regulation 994/2010 was an important step in terms of improving the institutional framework of the EU. Not only did the regulation provide preventive action and contingency plans, and strengthened the role of

institutional bodies, it also increased the EU's ability to speak with one voice in the case of a supply disruption. The regulation directly addressed the external dimension of energy policy, reinforced by the Lisbon Treaty, as opposed to the liberalisation packages, which aimed at tackling external issues via internal market instruments provided for by the SEM programme. Hence, the institutional design was strengthened insofar as the policy framework was widened – it added new components to the regulatory framework; but it was also deepened - the regulation constituted a considerable step-up from the previous directive of 2004, which proved incapable of regulating the EU's response to the gas crises of 2006 and 2009. It also further entrenched actors into the structural makeup of the institution and embedded them more deeply into the institutional framework. The regulation set out precise operational and technical rules that actors had to adhere to and which had to be implemented evenly across the different Member States. This in turn instigated positive feedback processes: constant monitoring, the acquisition of information (and exchange between the actors), technical and infrastructural requirements (that needed considerable investment), and adaptive expectations (due to the manifold resources that were invested by the actors). The feedback, in turn, further bound actors to each other and the institution.

When assessing the process of integration between Directive 2004/67/EC and Regulation 994/2010, both addressing the external dimension of energy policy, an increase of effectiveness of the policy output can be identified. The level of integration is measured and defined as the *difference between different levels of policy outcome* (effectiveness of the *policy output*) at different points in time. Whereas Directive 2004/67/EC was not able to govern the sector in the event of an energy crises, Regulation 994/2010 improved the institutional capacity (European Commission 2016p). What changed in terms of the prerequisites that made it possible to increase the scope and depth of Regulation 994/2010 compared to Directive 2004/67/EC? As previously stated, according to Borchardt, Regulation 994/2010 needed Article 194 in the Lisbon Treaty, which addressed energy policy for the first time in primary law, and provided the legal

basis to propose new provisions (Interview 11, 2018). This supports the premise that, in order to have the capacity to react to specific developments in a sector – in this case to efficaciously react to exogenous factors in form of supply crises - the specific aspect of the sector must be addressed in primary law, to create preconditions that make institutional change possible.

In the case of Directive 2004/67/EC such assumptions did not materialise. Under the shadow of a veto due to Article 100's requirement of a unanimous vote, which laid the legal foundation for the directive, the Energy Council drained the Commission's proposal of any substance, by omitting all the provisions that were meant to create a Community framework. In fact, the Council changed the draft directive of the Commission from guaranteeing a strong regulation to enhance supply security of its internal gas market, to merely providing an adequate level of supply to the energy market. It removed all provisions on the harmonisation of national legislation and left it to Member States to choose the instruments they deemed appropriate to ensure supply security (Agence Europe 2003a). Via the stratagem to not *directly address* the internal market in the amended proposal, the Council was able to change the voting system based on Article 95 - co-decision and majority of votes in the Council - to Article 100, which meant that the Council decided alone by a majority of votes (Agence Europe 2003b). For the Council, the absence of provisions on the internal market in the proposal justified the change of the legal basis, which in turn resulted in a change of the decision procedure, with the EP being excluded (Agence Europe 2004b).

The strategy of the Council to disregard the internal market in a provision that addressed the external dimension of energy policy resulted in an ineffective directive that came down to the lowest common denominator of the Member States. As the evidence demonstrates, the directive was not equipped to successfully react to, and alleviate, the serious social and economic consequences of the 2006 and 2009 crises. As primary law did not provide any provisions addressing the external dimension of energy policy, Member

States were not constrained through, and steered by, the institutional regulatory framework in terms of their policy choices.

The behaviour of the Member States can be interpreted as an effective strategy to exclude the external dimension of energy policy from being incorporated into the institutional framework in the mid 2000s. However, this was no longer possible once the Lisbon Treaty was implemented, as Article 194 states that "Union policy on energy shall aim, in a spirit of solidarity between Member States, to […] ensure security of energy supply in the Union". Article 194 also refers back to the internal market (and environmental policy). However, it clearly addresses the external dimension as the "Lisbon Treaty reinforces a formal European energy security mandate. […] DG Energy now leads on the external dimensions of energy policy" (Youngs 2011: 46). As Borchardt confirmed, without the energy article in the Lisbon Treaty, it would have been very difficult to implement Regulation 994/2010 in the form in which it was eventually realised (Interview 11, 2018).

A brief counterfactual analysis can be undertaken based on the hypothetical situation whereby an energy title was already introduced into treaty law prior to the negotiations leading to Directive 2004/67/EC. Under such premises, diluting the proposal might not have been accomplished that easily, as the institutional framework - in the form of treaty law - would have constrained the possible policy options for actors (to dismiss the proposal), and obliged them to adhere to institutional rules. Moreover, under the Lisbon Treaty, the decision-making procedure could not have been altered as was the case for Directive 2004/67/EC; energy policy became a shared competence between the EU and the Member States, co-decision became the voting procedure and decisions are now made by Qualified Majority Voting in the Council. As a result of these structural amendments, the Commission's policy initiatives could no longer be questioned.

6.1.2. Decision 994/2012

As the internal market did not deliver optimal instruments in regard to governing external affairs and providing effective means to respond to energy crises, such as the Russian-Ukrainian gas disputes, the European Union chose to address the external dimension of energy policy more directly. The policy discourse in the EU shifted from a purely market-based approach towards a more security centred approach regarding the energy supply situation, external energy policy, and the role of the EU in the International Political Economy of energy (Boersma & Goldthau 2017). The Lisbon Treaty offered new opportunities regarding external representation to advance cooperation and dialogue with third countries and regions. It delivered the legal basis for aspirations to go beyond purely internal market provisions towards presenting a political face to the external dimension (Braun 2011). Regulation 994/2010 was the first step in this direction, delivering improvements regarding the security of supply. As discussed in this chapter, one of the constituent parts of the Regulation was the obligation of Member States to inform the Commission about existing and future Intergovernmental Agreements (IGAs) between Member States and third countries by 3 December 2011(Council / EP 2010b). However, a shortcoming of the provision was owed to the omission of any exchange of information between Member States. Hence, the issue of a lack of information and transparency on IGAs was not solved by the regulation (Batzella 2018).

In order to address the consistency and coherence of the EU's external relations in energy more effectively, in February 2011, the European Council invited the Commission to submit a communication on security of supply and international relations by June 2011. Embedded within these wider objectives, the European Council also invited the Member States to inform the Commission about all their existing and new bilateral agreements with third countries from 1 January 2012 onwards. The Commission should subsequently make this information available to all the other Member States,

however, it should protect commercially sensitive information (European Council 2011). The Commission took on the task and, based on a public consultation, published a proposal for a decision setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy. Congruent with the theoretical framework, the European Council invited the Commission to propose a new set of *intended goals*. As outlined, exogenous factors, such as the gas crises, impacted the institution and played an important role for the formulation of these goals. Moreover, the institution strived to enhance information exchange among different actors to improve the efficiency of institutional settings.

The proposal suggested that only clear obligations regarding the information exchange mechanism would improve the transparency required for coordination at EU level. Voluntary measure did not prove to be effective in guaranteeing the type of exchange of information necessary to ensure contractual obligations between Member States and third countries are lawful. Member States should, therefore, submit all existing and provisionally agreed IGAs to the Commission, at the latest three months after the decision entered into force. The Commission should then make the documents accessible to all other Member States, excluding confidential commercial information, per request by the concerned Member State (which did not apply to the Commission, who should have access to all information). Not only might the Commission, on request by the Member State, assist the Member State during negotiations - about which the Commission should already be notified - but also have the right to participate as an observer in the negotiations and be informed regularly about the ongoing negotiations (European Commission 2011). The rationale for information exchange during the course of the negotiations was based on the fact that once IGAs were concluded and ratified, they were very hard to alter and would need to be re-negotiated with the third country. Many of the IGAs were long term take-or-pay (TOP) contracts with third countries: to buy a predefined quantity of gas, or to pay a specific

amount if the gas was not consumed to compensate for the loss. Moreover, if Member States had surpluses of gas, these could not be resold. Under these circumstances, the supplier always has a hold over the buyer, and some of the IGAs can be seen as far-reaching adhesion contracts. Therefore, the EU stepped in to alter this situation. The IGA decision itself was reasoned through the Third Energy Package and the functioning of the market (Interview 1, 2018). Most importantly, and this was a very controversial point during the legislative procedure, the Commission proposed an ex-ante assessment of agreements before they were concluded. This meant that after the closure of the negotiations, and before the IGA was signed, the Commission, on its own initiative, would have to assess the compatibility of the negotiated agreement with Union law (ibid.).

Overall, the Commission proposal was very ambitious and an important step from Regulation 994/2010 in terms of the advocated provisions. It is thus no surprise that the proposal encountered strong opposition in the Council (Euractiv 2012). Krišjānis Kariņš, who was the rapporteur on the proposal in the European Parliament, stated that most of the countries did not like the proposal and, thus, it was diluted to secure a majority of support in the Council (ibid.). Of the EU's six largest countries (Germany, France, UK, Italy, Spain and Poland), three were major importers of Russian gas – Germany, France, and Poland - and Germany and Italy had privileged relations with Gazprom. As a matter of fact, the only big Member State that supported the proposal by the Commission was Poland, as they wanted to create a level playing field for all market-participants (Interview 8, 2018).

Poland sought to increase its influence in the EU, solve energy security issues together with other Member States, with the aim of diminishing energy dependence on Russia; Poland retained a rather cautious stance towards Moscow (Badgonas 2011). However, Poland was only supported by smaller Member States, Lithuania and Latvia amongst them. Italy, France, Germany, Belgium, and the UK were opposed to the original proposal by the Commission

(Batzella 2017). In the words of Giles Chichester, British MEP and Conservative spokesman on energy in the European Parliament, “[o]ur energy arrangements are member states' own business, not the commission's. This is an attempt to control and interfere with our individual trading interests on a new and deeply worrying scale” (Giles as cited in Vasconcelos 2011). In the end, the decision was considerably diluted, as Member States took a hard line during the negotiations. According to German MEP Bernd Lange (2012),

> “[he had] never witnessed anything like this before, namely that the Council has taken a heavy-handed position, seeking to blackmail Parliament by saying: take it or leave it. I have never known the Council’s chief negotiator to get up and leave a trialogue before” (Lange as cited in European Parliament 2012).

Considerable amendments were made to the final decision. For instance, the obligation to inform the Commission before or during negotiations on an intergovernmental agreement with a third country, was omitted and replaced by a voluntary option to notify the Commission (Art. 3-3). Member States, who had to submit all existing IGAs to the Commission by 17 February 2013 (Art. 3-1), also had the freedom to indicate whether any part of the information was confidential and whether it could be shared with all other Member States or not (Art. 4-1). Access to information should not be restricted for the Commission (Art. 4-2). Member States could also request the assistance of the Commission in negotiations if considered beneficial (Art. 5). In the case that a Member State had indicated that information may be shared, the Commission should make the information accessible to all Member States in a secure electronic form, with the exception of any confidential parts (Art. 3-3). When a Member State, under Article 4-1, notified the Commission that information should not be shared, a summary should be provided to the other Member States (Art. 3-7).

Most importantly, the ex-ante mechanism was discarded in its entirety, unless a Member State explicitly asked for an assessment during negotiations (Article 6); If a Member State was unable to reach a firm conclusion on whether an

IGA was compatible with Union law or not, it could ask for an appraisal by the Commission. Instead, an ex-post mechanism was implemented in Decision 994/2012, which implemented the requirement that, by 1 January 2016, a report on the application of Decision 994/2012 should be published on whether the decision promoted compliance of IGAs with Union law and whether it had an impact on Member States' negotiations with third countries (Art. 8-1&2). The decision faced stark opposition from Member States who were unwilling to endow the institution with the competence to influence negotiations with third countries. This behaviour can be explained by rational choice decision-making / the calculus approach in which Member States protected their interests. Nevertheless, although Member States were reluctant to concede considerable powers to the institution, they had to address the policy area, as they were obligated by primary legislation to do so. As we will see, this in turn triggered unintended consequences later in the sequence, as the decision was revised in 2017 with considerably stronger provisions.

Powerful Member States with beneficial relations with third countries did not want to renounce their advantageous positions in terms of future contractual arrangements, in favour of a wider European approach, where all Member States enjoy a level playing field regarding gas contracts. From a utilitarian standpoint, which is endorsed by rational choice theory, this can be explained as individual actors strive to get the most out of their economic decisions. The Member States with favourable economic ties with producer countries did not want to have their agreements scrutinised ex-ante by the Commission, because this might have had consequences due to possible incompatibility with Union law. In a nutshell, ex-ante disclosure and assessment of information before and during the negotiations for IGAs might result in some Member States having to adhere to Union law in a stricter manner than in the case of an ex-post assessment. The ex-ante assessment might have an effect on the preferential treatment that some Member States enjoy vis a vis lower prices and better contractual conditions. This in turn might decrease their expected return on investment, and diminish their revenues over a considerable amount

of time, since IGAs are long-term bilateral contracts. However, once IGAs between Member States and third countries are concluded, they are subject to international trade law and are therefore very hard to amend.

As we will see in the upcoming section, Decision 994/2012 was reviewed within the policy package of the Energy Union. The revision of Decision 994/2012 granted Brussels a much tighter oversight over IGAs. Most importantly, the reviewed decision introduced a compulsory ex-ante compliance check with Union law, before an IGA is signed. Therefore, incremental institutional change and path dependent processes entrenched actors further in the institutional makeup, the longer they proceeded on this institutional path. Early decisions influenced the possible range of policy choices of later decisions and lead to unintended consequences. Later provisions entailed features that were not anticipated, or were rejected at an earlier stage, and therefore inadvertent *policy outputs* arose for different actors (dependent on their preferences). For instance, the decision to address the exchange of information in a dedicated article in Decision 994/2010 subsequently led to the implementation of an independent decision concerning the information exchange on IGAs. Although Member States were initially willing to support such undertakings, in the end, and with a few exceptions, Member States displayed stark reluctance to support the ambitious proposal by the Commission. However, the decision set the institution on a particular path that entrenched Member States and restricted their policy choices. Five years after the implementation of the original decision, the legislative act was revised, and they agreed on conditions they would not have approved when the first decision on IGAs was negotiated. This evidence suggests, that path dependence is a considerably strong factor in the institutional matrix. Path dependent processes increasingly bind actors to the institution over time, and based on these processes, the institution delivers a *policy output,* which actors might not have agreed to in the past.

In terms of the level of integration, based on measuring the difference of the *policy outcome* over a period of time, the new decision showed moderate integration; the *policy output* was not particularly effective in terms of the *intended goals*. The problem was that around one third of the notified IGAs did not comply with EU law with regards to questions of the Third Energy Package, and competition law, and no Member State was able to terminate or renegotiate the non-compliant IGAs under scrutiny (European Commission 2016 d). As explained in the methodology section, the *policy outcome* is understood as the degree to which the *policy output* proves to be effective in attaining a set of predefined goals. In this regard, the *policy outcome* of Decision 994/2012 showed a moderate level of *effectiveness*. Compared with the situation in the mid 2000s, where virtually no exchange of information on IGAs occurred, the regulatory framework can be understood as developing from a low level of effectiveness to a moderate level of effectiveness. Thus, a process of moderate integration can be identified from the mid 2000s to 2012.

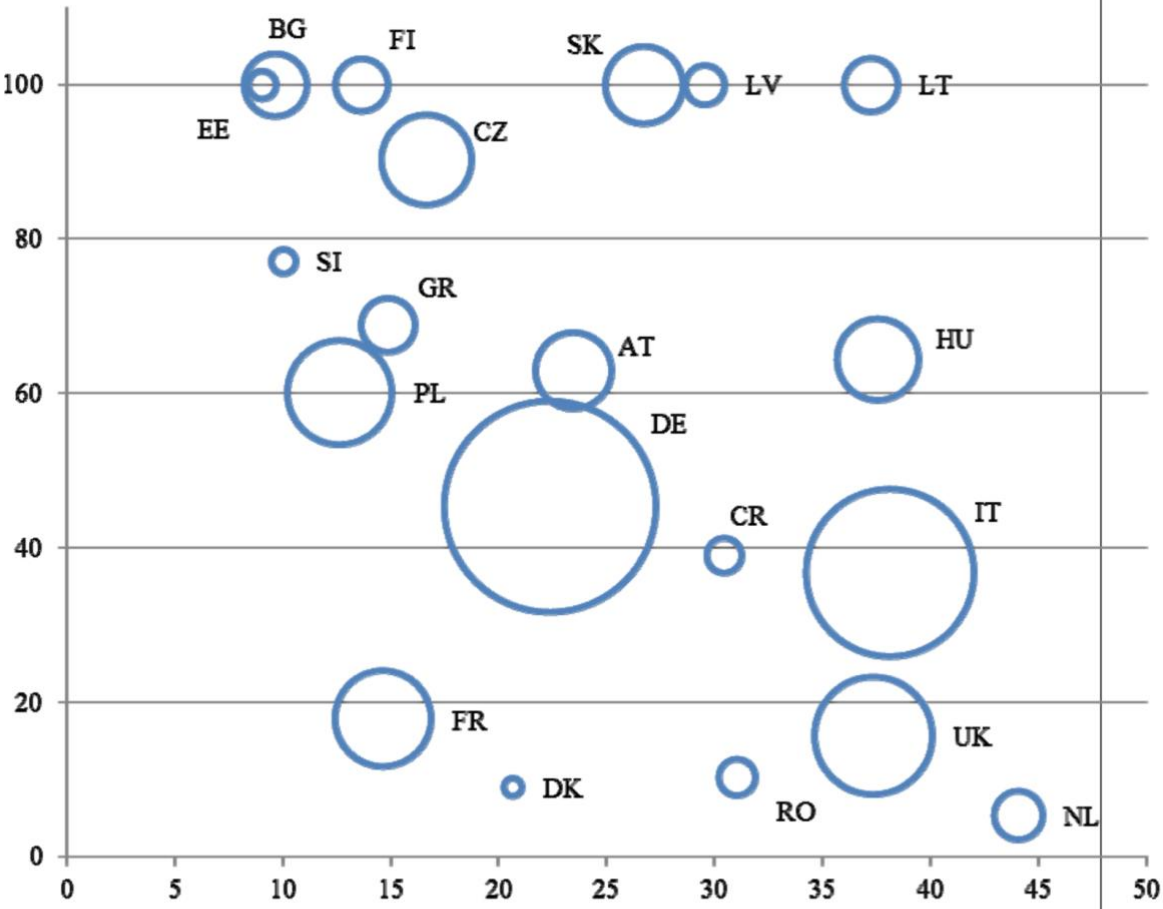
6.2. The Energy Union

If we want to take account of the driving factors and the rationale behind the proposal for the Energy Union, certain explanations come into play, among them, the need to eventually complete the internal market, the argument to decarbonise the economy and enhance energy efficiency. These goals were based on former policy instruments that should be strengthened through the project of the Energy Union. Path dependent processes led to further development of these provisions. However, the most compelling impetus for the initial proposal to create an Energy Union, and for institutional change, can be identified as an exogenous threat. Geopolitical instability in the Ukraine, inflamed through the annexation of Crimea by the Russian Federation, raised concerns of supply security once again and the EU's stark dependence on imports of gas from Russia. In 2014, the EU imported 53% of its energy, worth around 400 billion Euros (more than € 1 billion a day), making it the largest

energy importer in the world (European Commission 2015a). As for the gross inland energy consumption, petroleum products accounted for the biggest share (34,4%), followed by gas (22%), solid fossil fuels (16,1%), nuclear heat (13,6%) and renewables, which account for 13% (Eurostat 2017b). Energy imports accounted for more than a fifth of total EU imports. Energy import dependency related to oil (almost 90%), natural gas (66%), solid fuels (42%) and nuclear fuel (40%) (European Commission 2014a).

Starkly contributing to the ambitions to form a European Energy Union, and as shown in Table 8 below, Member States like Estonia, Bulgaria, Finland, Latvia, Lithuania and Slovakia imported 100% of their gas requirements from Russia and three of them used natural gas for more than a quarter of their total energy needs. Other Member States, like the Czech Republic, Slovenia, Greece, Poland, Hungary, and Austria, also imported more than 50% to various degrees (Commission 2014a). Total Russian gas imports declined from 34.6% in 2005 to 26.8% in 2010. However, in 2013 they peaked again at 32.4% and were just below 29.7% in 2014 (Eurostat 2017a) when the Crimea crisis took place. Thus, the 'gas leverage' that Russia holds over the EU is quite considerable and creating the possibility that Russia might exploit this dependence to pursue its own geopolitical ends. Negative effects might not only be triggered by possible disruption to supply, due to geopolitical instability in transit countries, but the dependence on one supplier might cause market distortions and weaken the EU's ability to react to geopolitical events, exposing the EU's policy making to ascendancies from outside of the EU (Austvik 2016). The developments in the Ukraine were a stark reminder of the vulnerability of the EU regarding energy security and the stable supply of gas. As far as energy efficiency in relation to supply security is concerned, the Commission estimated that every additional 1% increase in energy savings would cut gas imports by 2.6% (European Commission 2014b).

Table 8 Dependency on natural gas supplies from Russia



Horizontal axis: % of natural gas in the energy mix – Vertical axis: % of Russian natural gas in national natural gas consumption - Size of the circles: volume of imported Russian natural gas.

Estimates based on preliminary industry data for 2013 and including natural gas volumes traded by Russian companies not necessarily produced in Russia.

Source: European Commission 2014a

Certain other driving factors for the proposal for the Energy Union should be mentioned at this point, as they complete the picture of why the need for an Energy Union emerged. Firstly, electricity retail prices for end consumers were high. Although wholesale electricity prices in the EU are quite low, they are still 30% higher than in the US, and post-tax electricity prices for households increased by over 4% from 2012 to 2013 alone (European Commission 2015a), highlighting the dysfunction of the energy markets. Secondly, many new or recent gas-fired power plants were mothballed as priority was given to

Renewable Energy Sources (RES) regarding grid access and support schemes paid for by the end consumer (Vinois 2016). Thirdly, the price of gas was too high, together with low carbon prices, provoking the re-emergence of coal. Finally, national policies, based on security concerns and consumer protection, became more numerous and, thus, infringed on the common objectives of an internal market (ibid.).

6.2.1. First steps towards the Energy Union – the proposal

As mentioned previously, substantial impetus to create an Energy Union was instigated through geopolitical unrest in the Ukraine, fuelling energy security concerns. Based on the insights acquired by empirical evidence in the former chapters, this thesis suggests that exogenous events can only have an impact on the institution if the institution has the capacity (enshrined in primary law) to react to such events. Lisbon codified the obligation to secure the supply of energy and the functioning of the energy market. Against this backdrop, in April 2014, Donald Tusk, then Prime Minister of Poland, proposed an Energy Union, which in essence should resemble the European Banking Union or the EU's atomic energy union, Euratom. At the heart of this union, and based on solidarity and common economic interests, Tusk suggested the creation of a single European body in charge of buying gas from third country suppliers. The Commission should take part in and supervise all new negotiations. Solidarity between Member States should be strengthened, the EU's energy infrastructure should be enhanced (as some Member States were dependent on a single supplier), and the use of fossil fuels should sustainable, including coal and shale gas. In addition, Tusk suggested engaging with new partners and emerging suppliers, harnessing LNG technology to transform the situation on the European energy market, and to strengthen and extend the Energy Community eastwards, to boost security not only for the EU but also for Europe as a whole (Tusk 2014). Tusk's proposal was based on security concerns and the implications these have on energy markets and political stability in Member

States, urging Member States to transfer considerable decision-making powers to supranational institutions. Although the single buyer idea found little favour among Member States, decision makers perceived the need to address energy policy more coherently as “wider developments acted as a catalyst for renewed thinking about the EU’s role in energy” (Buchan & Keay 2015: 2).

As Austvik (2016) points out, the Central and Eastern European Countries (CEEC) welcomed Tusk’s proposal for the Energy Union (and its inherent call for more interventionist measures), since for CEECs, issues of supply security, solidarity between the Member States, and concerns regarding the Russian gas imports are paramount. From an HI standpoint, the formation of these Member States' preferences can be explained as being endogenously given, and displaying a strong normative component, highlighted by the reference to solidarity. As laid out in the first chapter, institutions are, apart from arbiter between actors’ different interests, carriers of ideas about how actors perceive the world, providing a link between institutional and cognitive factors (Fioretos et al. 2016). On the other hand, Western European countries framed the issue differently, based on exogenously given preferences, with an emphasis on “markets and institutions” (ibid.: 380), and with the primary goal of completing the single market, creating a low carbon economy and ensuring environmental sustainability. The heterogeneous preferences among Member States is based on the fact that Western European energy markets are more developed, thus, they face less security of supply issues. Moreover, their relations with Russia are more distant, geographically speaking, than Member States who were part of the former Soviet Bloc (ibid.). Creating a common policy for energy poses certain difficulties due to the divergent preferences of Member States, based on the size of their economies, import independence, size of their major energy companies, and strategic relationships with suppliers. Members States are firstly concerned with their national supply security – associated with political stability - before they are willing to turn their attention to other energy policy strategies, such as environmental issues or the proper functioning of the internal energy market (Pointvogl 2009).

Tusk's proposal framed the approach to energy policy away from the focus on the single market and towards bolstering energy security with the help of domestic fossil fuels. In his initial proposal, security concerns were emphasised over environmental issues as "we need to fight for a cleaner planet but we must have safe access to energy resources and jobs to finance it" (Tusk 2014). Perceptions of Member States showed considerable variation as, for instance, the United Kingdom and the Czech Republic addressed the Energy Union in a non-paper calling for less supranational powers in energy policy. Germany on the other hand, in another non-paper, stressed the need to collaborate closely in the fields of energy efficiency and climate change (Zachmann 2015).

In the end, Tusks original propositions to completely shift energy issues towards the domain of energy security did not materialise, as the final proposal stressed the need to "move away from an economy driven by fossil fuels" (European Commission 2015a: 2). Moreover, the option to collectively purchase gas during a crisis, and where Member States are dependent on a single supplier, was amended to be a voluntary option (and in line with prevailing legal provisions laid out by the WTO and EU competition rules) (ibid.). The option for joint purchasing is now framed as a regional option for those Member States that fear being blackmailed by Gazprom. Germany, the United Kingdom and Western European countries in general were sceptical about the joint gas purchasing facility (Oroschakoff 2015), as this would mark "a break with EU's fundamental liberal idea of an internal market with competition, and free movements of goods and services as a premise" (Austvik 2016: 379).

The energy industry was divided over the issue, as some West European energy companies had solid long-term contracts with Gazprom and, therefore, wanted as little involvement of the Commission as possible. Nevertheless, the proposal was broadly welcomed by the industry as the diversification of supply

creates business opportunities in the Mediterranean neighbourhood (as stressed by the CEO of Italy's energy company Claudio Descalzi), and some CEECs companies also welcomed the prospect of enhanced bargaining power of the Commission (Oroschakoff 2015). Some agendas were re-framed whilst others can be found within the final proposal of the Commission. Tusk's bold call for the Energy Union did managed to draw attention to the EU's stark dependence on Russian gas and, as a consequence, the need for diversification of energy suppliers and the strengthening of security measures.

On 25 February 2015, the Commission proposed the Energy Union, based on three Communications forming the "Energy Union Package": "A framework strategy for a resilient Energy Union with a forward-looking climate change policy" (European Commission 2015a), "Achieving the 10% electricity interconnection target: making Europe's electricity grid fit for 2020" (European Commission 2015b), and "The Paris Protocol – A blueprint for tackling global climate change beyond 2020" (European Commission 2015c). In a nutshell, the Energy Union is based on three main objectives that have surrounded the EU's energy policy in recent decades. Firstly, the Energy Union should address issues regarding the security of supply, to ensure the reliable provision of energy to every part of the EU, whenever it is needed. Secondly, to create a competitive environment for energy providers to ensure affordable prices for households, businesses and industry. Thirdly, to tackle issues of sustainability, which translates into lowering greenhouse gas emissions, pollution, and fossil fuel dependence (European Commission 2017a). In order to reach these goals, five mutually supportive and closely interrelated dimensions are addressed in the proposal. As we will see, all the dimensions of the proposal are recurring themes of the EU's energy domain, however, for the first time they have been embraced by one single proposal. Based on the theoretical model, these dimensions incorporated the new set of *intended goals*.

(1) *Energy security, solidarity and trust* to be facilitated through the diversification of supply (energy sources, suppliers and routes); close collaboration between Member States, transmission system operators (TSOs), the energy industry and related stakeholders to facilitate a high level of energy security for citizens and companies and to improve the EU's economic weight on global energy markets; more transparency on Intergovernmental Agreements (IGAs) related to the buying of energy from third countries. (2) *A fully integrated European energy market* to be created through an improvement of electricity and gas transmission systems, especially with regards to cross-border connections; a strict enforcement of existing energy legislation, especially the full implementation of the Third Energy Package with regards to the unbundling and independence of regulators; enhanced regional cooperation; a wider choice of suppliers for consumers to choose from; and to diminish energy poverty. (3) Increasing *energy efficiency contributing to moderation of energy demand* to reach 27% of improving energy efficiency in 2030 (when compared to the projected use of energy in 2030). This goal should be attained through focusing on energy efficiency in the building sector; and an energy-efficient transport sector as this sector represents 30% of final energy consumption in Europe. (4) *Decarbonising of the economy* by 40% domestic reduction in greenhouse gas emissions compared to 1990 and by utilising the EU Emissions Trading System (ETS); and becoming the world leader in renewable energy with a share of 27% of renewable energy consumed in the EU in 2030. (5) Finally, a focus on *Research, Innovation and Competitiveness* will help to bring about the next generation of renewable technologies and storage solutions. Moreover, harnessing and further improving smart grid and smart home technology, clean fossil fuel and clean transport, and the world's safest nuclear generation will facilitate economic growth, jobs and competitiveness. A better coordinated and aligned research strategy of the Member States and the EU will help to achieve common goals and deliverables more effectively (European Commission 2015a).

The proposal for the Energy Union suggests a holistic approach towards energy policy and embraces several interrelated dimensions, facilitating close collaboration of Member States and information sharing to improve energy security and trade, empowering consumers to take full advantage of the internal market, addressing fuel poverty and the social dimension of energy, improving measures to enhance environmental sustainability, and taking advantage of technological innovations and smart technology in the energy sector. The institution based the project around energy security, markets and trade, and, at the same time, strengthened ideational components like environmental sustainability, solidarity and collaboration, and social concerns. The proposal built on preceding steps and policy instruments. In the words of Dr Florian Ermacora, Head of the Internal Energy Market Unit in DG Energy,

> "[we were] not founding something genuinely entirely new compared to what [we had] before, but we re-evaluated policies and labelled it Energy Union" (Interview 4, 2018).

These claims were also substantiated by Prime Minister of Latvia, Arturs Krišjānis Kariņš, who was part of the Committee on Industry, Research and Energy (ITRE) in the European Parliament.

> "I think what has been going on for a good number of years is based on infrastructural development - cross border connections strengthening the connection of different regions – and the regulatory environment: starting with the Third Energy Package, where the big state monopolies were dismantled and competition was introduced. The way I see it is that the proposals for the Energy Union are just a continuation of these measures […] And the ultimate goal is to open up the markets even more" (Interview 2, 2018).

In order to achieve these goals, the Commission proposed a coherent plan for an integrated governance and monitoring process, as part of the policy cycle discussed in Chapter II, in order to ensure that actions taken at European, regional, national and local level all contribute to the Energy Union's

objectives. Moreover, annual reports on the state of the Energy Union to the European Parliament and the Council should address key issues and foster dialogue between the different institutions and stakeholders (ibid.).

6.2.2. The Summer Package

In July 2015, the Commission presented the so-called energy 'summer package', which was the first set of proposals to launch the redesign of the European electricity market, to revise the EU ETS system, to update energy efficiency labelling and to deliver a new deal for energy customers. The revision of the ETS scheme was justified through the 2030 Climate and Energy Policy Framework (European Parliament 2015), and endorsed in the conclusions of the European Council in October (European Council 2014). The European Council promoted a binding EU target of at least 40% reduction of greenhouse gas emissions by 2030 compared to 1990 (which in practise meant a 43% reduction of GHG emissions in sectors covered by the ETS). The key tool for achieving this was a reformed and well-functioning ETS scheme. Thus, the annual factor to reduce the cap on the allowed permissions should be changed from 1.74% to 2.2% from 2021 onwards (European Council 2014), to increase the carbon price and encourage investment in renewable or low-carbon energy sources. In addition, under the summer package umbrella, energy labelling was revised, in order to make it easier for consumers to take well-informed purchasing decisions (European Commission 2015e). Regarding the demand side, energy consumers should become better informed through transparent billing rules, price comparisons and enhanced bargaining power to take full advantage of the internal market. Lastly, a re-design of the energy market would improve cross-border connection, encourage greater investment in energy infrastructure, promote and integrate RES, harmonise retail and wholesale prices, improve the EU's regulatory framework and ensure supply security (European Parliament 2015). As an interviewee contended,

> “Energy infrastructure is an essential part of the functioning of the internal market. However, in some cases it seems that powerful lobbying groups of some Member States try to hamper the development of infrastructure in order to protect their own share in domestic markets” (Interview 2, 2018).

The proposals were an “important step towards implementing the Energy Union strategy with a forward looking climate change policy” (European Commission 2015d: 1) and gave “prominence to the ‘energy efficiency first’ principle and put households and business consumers at the heart of the European energy market” (ibid.). Here, we can see normative factors playing a key role in the development of the policy. The term ‘Efficiency First’ denotes the fundamental principle around which the European energy system should be designed, underpinning the entirety of the Energy Union project. Energy efficiency should be treated as an energy source in its own right, measured through the value of energy it saves (European Commission 2015a). Efficiency First is understood as a policy measure,

> “[to consider] the potential value of investing in efficiency (including energy savings and demand response) in all decisions about energy system development – be that in homes, offices, industry or mobility. Where efficiency improvements are shown to be most cost-effective or valuable, taking full account of their co-benefits, they should be prioritised over any investment in new power generation, grids or pipelines, and fuel supplies” (European Climate Foundation n.d.: 2).

The Commission emphasised energy efficiency as a central principle of the Energy Union, as it is an effective way to cut greenhouse gas emissions, helps all customers to save money, and enhances the EU’s supply security due to decreased imports (European Commission 2015d).

6.2.3. The State of the Energy Union I

The proposal for the Energy Union sets requirements to closely monitor energy related actions at European, regional, national and local level and to annually inform the Parliament and the Council on the state of the Energy Union, in order to define key issues and foster a policy debate (European Commission 2015a). Based on the theoretical framework, monitoring mechanisms are important to help readjust the way how the policy output (albeit here understood as progress made towards implementing legislation addressing the Energy Union) is translated into concrete action by various actors and stakeholders. Monitoring is an essential part of the policy cycle, and co-responsible for creating increasing returns. Integral parts of the policy cycle are based on monitoring mechanisms, which are subsumed as learning and coordination effects. Therefore, the Commission presented a communication titled “State of the Energy Union 2015” on 18 November 2015 (European Commission 2015f). Maroš Šefčovič, the Vice President of the European Commission and in charge of the Energy Union, in a speech at the European Parliament on the state of the Energy Union, on 24 November 2015, put forth four key issues that needed special attention. The EU must keep its position as a global leader towards a low carbon society and further develop financing instruments, making them more suitable for financing needs. Secondly, in order to make the transition towards an Energy Union feasible, it has to be socially just and consumer centred. Moreover, geopolitical matters remain a concern for an integrated energy policy, therefore, such issues must be tackled with well-adjusted policies towards suppliers, transit partners and routes. Regarding Nord Stream 3 and 4, Šefčovič emphasised that “[t]hese pipelines, if built, will have to comply fully with EU law” (Šefčovič 2015, para. 3). Moreover, he pointed out that the Nord Stream Project will not become a project of common interest (PCI) as it would make the EU more reliant on Russian gas, which in turn would adversely affect the EU’s Energy Security Strategy, that is based on a diversification of energy sources, suppliers and routes (ibid.). Without going to go into too much detail about the project itself, Nord Stream 2 is a contested pipeline that should transport gas from Russia to Germany, bypassing the Ukraine. In this regard, unintended consequences

unfolded for Member States partaking in the project as, over time, much resistance towards the project emerged. Fourthly, Šefčovič introduced a governance mechanism that should bring transparency and predictability to investors and businesses through an annual State of the Energy Union report, biannual reports on National Energy and Climate Plans, and through sector-specific legislation (specifically with regard to the 2030 targets) (Šefčovič 2015).

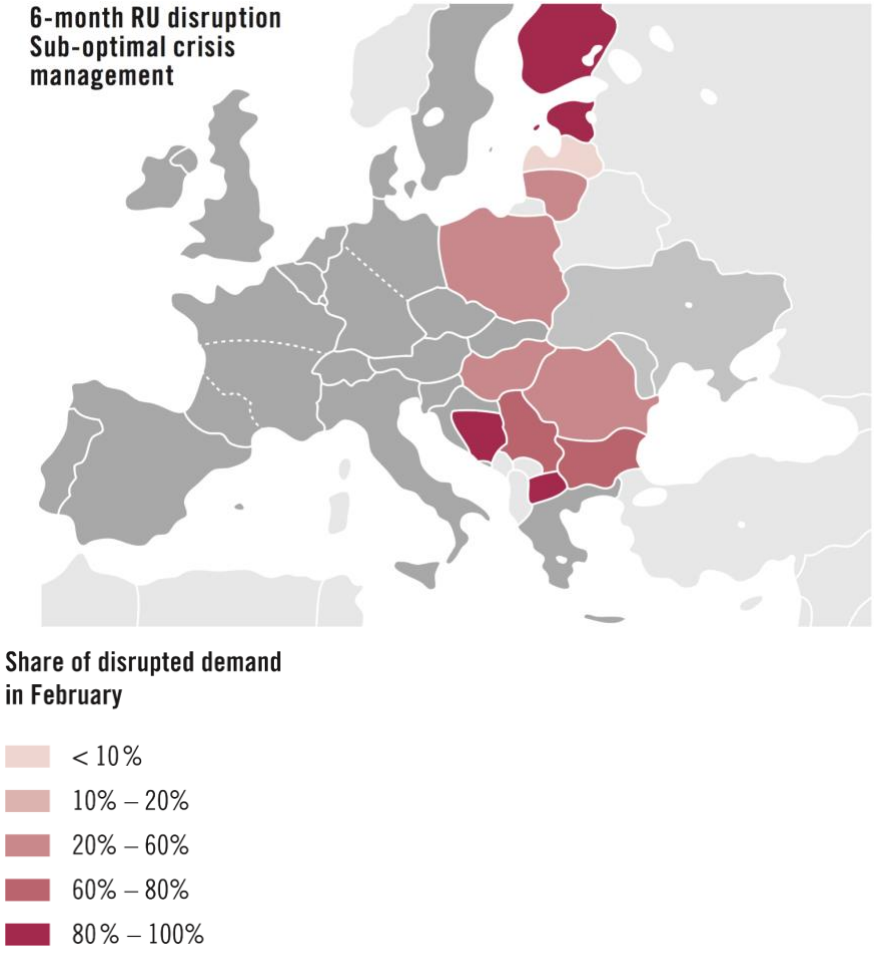
In sum, the first State of the Energy Union Report assessed the progresses that was made, and defined further *intended goals*, regarding the five core dimensions addressed in the proposal for the Energy Union. The report set out the way forward in these dimensions, concerning the decarbonisation of the economy, energy efficiency and moderation of demand, a fully integrated energy market, energy security, solidarity and trust, and research and innovation and competitiveness (European Commission 2015f). To this end, the implementation of the Energy Union should be facilitated through national energy and climate plans, which were deemed necessary tools for a more strategic approach to planning, and for the achievement of the 2030 targets. Therefore, Member States should present National Plans in 2017, with a view to finalising their National Plans in 2018, so that they could be fully operational before 2021. To track the progress, the Commission proposed a coherent methodology for measurement, a transparent monitoring system "based on key indicators" (ibid.: 16). Alongside the State of the Energy Union report, several other Energy Union deliverables and reports were adopted and published; among them a second list of Project of Common Interest, an oil stock summary, a report on the implementation of the EU Energy Security Strategy, a climate action and an energy efficiency progress report (European Commission 2015h).

6.2.4. The Sustainable Energy Security Package

The next incremental step for delivering the Energy Union was the Sustainable Energy Security Package presented in February 2016; a collection of proposals addressing the security of gas supply, transparency of Intergovernmental Agreements, EU strategy on LNG and gas storage, and the EU strategy on Heating and Cooling (European Commission 2016a). The energy security dimension can be regarded as one of the cornerstones of the Energy Union strategies. The package contains a revision of the provisions on the security of gas supply 994/2010 (European Commission 2016b). The proposal itself is framed under Article 194 TFEU which “recognises that a certain level of coordination, transparency and cooperation is necessary as regards EU Member States' policies on security of supply” (ibid.: 3). The Commission proposed stronger regional coordination facilitated through closer collaboration of Member States within their regions when conceiving security of supply measures (based on standardised risk assessments). The respective action plans and emergency plans should then be peer-reviewed and approved by the Commission.

Although the original regulation 994/2010 had improved the security of gas supply in Europe, serious shortcomings were still identified regarding the cooperation between the Member States, as the predominately national measures were not well suited to deal with supply disruptions. A stress test conducted in the summer of 2014 revealed that a disruption of gas supplies from the east would heavily affect the EU (European Commission 2014c).

Figure 2. Modelling approach: 6-months Russian supply disruption under a non-cooperative scenario



Source: ENTSOG 2014

As we can see in Figure 2., the stress test, conducted by ENTSOG, confirmed that South-Eastern European, Central-Eastern, and Baltic states are starkly reliant on imported gas from Russia (ENTSOG 2014). The Commission's communication 'On the short term resilience of the European gas system' (European Commission 2014c) stated that in the absence of cooperation between Member States, supply shortages of 40% (in some cases up to 100%) could affect Bulgaria, Serbia, Romania, and the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina in both scenarios of a Ukraine transit and full Russian supply disruption. Finland, Estonia and Lithuania would be affected to almost the same degree, if Russian gas imports were to cease.

Poland and Hungary would also be affected, to a slightly lesser degree, however, still accounting for shortfalls of 20% and 30%, respectively (ibid.).

The Commission also emphasised the need to improve physical infrastructure. During the gas crisis of 2009, the Member States would have had the necessary capacities of gas available, however, it was impossible to transfer gas to the affected Eastern European Member States. Member States should therefore fulfil the so-called N-1 rule (an obligation introduced with Regulation 994/2010 and to be fully implemented from 3 December 2014 onwards), which states that if they are dependent on a single supply pipeline, in case of a failure of the gas supply, they must still be able to satisfy demand on extremely cold days. Although 20 Member States already provided the necessary interconnections (Sweden, Luxembourg and Slovenia are exempt due to their small and isolated gas markets), Greece, Bulgaria and Lithuania did not fulfil the obligation in 2013 (European Commission 2014d).

The second tool addressing shortcomings, in terms of infrastructure, is the further implementation of the permanent bi-directional capacity; the so-called physical reverse flows. This means that gas can be transported in *both* directions, which helps shippers to swiftly re-route gas deliveries within the internal market if a supply disruption occurs. Here, the empirical evidence shows how initial policy steps in the form of Regulation 994/2010, which introduced bi-directional capacity, resulted in further steps deepening the policy framework. The amount of bi-directional cross-border interconnectors increased from 24% in 2009 to 40% of all interconnection points in 2014. However, the Commission emphasised that the flexibility of the gas grid still leaves room for improvement (European Commission 2014d). Along these lines, the proposal for a revision of regulation 994/2010 called for further extension of the *infrastructure standard* (the N-1 rule) to not only account for a capacity-based-approach but also provide a more thorough analysis to capture gas flows. It also promoted the extension of the provisions on reverse flows,

to enable a permanent reverse flow capacity of interconnection points (European Commission 2016b).

The proposal additionally incorporated a new 'solidarity principle' to the *supply standard* to ensure a continued supply of energy to protected customers[9], if a Member State has declared a state of emergency. In this case, neighbouring countries will be obliged to supply gas to the Member State in distress, which might imply that they have to decrease their own supply standard, in terms of supply to customers, rather than protected customers in their respective countries (for instance, large scale enterprises). Here, a strong normative connotation based on ideational factors can be perceived. Member States are not only encouraged, but are *legally obliged* to help each other in the event of an energy crisis. Furthermore, supply contracts between natural gas companies and third country suppliers were not sufficiently transparent and the Commission called for additional transparency measures, to create coordination effects within the institution. Gas companies will be required to notify the national competent authority and the Commission when contracts, relevant for the security of supply, are signed or amended. This applies to contracts that together (or on their own) concern more than 40% of the annual gas consumption in the Member State (ibid.).

The package furthermore proposed an amendment of Decision 994/2012 with regard to IGAs in the field of energy (European Commission 2016c), as "[a]n important element in ensuring energy (and in particular gas) security is full compliance of agreements related to the buying of energy from third countries with EU law" (European Commission 2015a: 7). Here, strong path dependent processes are visible. The revision would contribute to the proper functioning of the internal market and energy security, and enhance the cost-effectiveness of the EU's energy supply and solidarity between Member States (European Commission 2016c). The adoption of Decision 994/2012, setting up an

[9] The term was introduced by decision 994/2010 and denotes households and essential services. For instance, healthcare and district heating.

exchange mechanism for information, obliged Member States to inform the Commission about existing and new bilateral energy agreements with third countries. Around one third of the notified IGAs did not comply with EU law with regards to questions of the Third Energy Package (for instance, unbundling, third party access and tariff setting) and competition law (prohibition of market segmentation). However, no Member State was able to terminate or renegotiate the non-compliant IGAs under scrutiny. This predicament is owed to the complex legal situation created by IGAs as, once these agreements are signed, they are legally binding under public international law and it is almost impossible for the Member State concerned to terminate or renegotiate the IGA without the agreement of the third country, in the absence of a termination or suspension clause. This practically tied the hands of the Commission even if a contract infringed on compliance with EU law (European Commission 2016d). The proposal for an amendment of Decision 994/2012 concluded that the IGA Decision in its current form is not efficient (in particular due to the legally binding *ex-post* assessment of IGAs) and did not result in transforming non-compliant IGAs into compliant ones, nor did any Member State submit a draft agreement to the Commission for a voluntary *ex-ante* check. The Commission considered Decision 994/2012 not effective and, hence, proposed the Commission's involvement *before* agreements are concluded, as by an ex-ante assessment potential conflicts between obligations of Member States under international treaty law and EU law would be remedied. Member states shall therefore not conclude proposed intergovernmental agreements or amendments until the Commission informed the Member State of any doubts and its opinion. The Member State thereafter "shall take utmost account of Commission's opinion" (European Commission 2016c:8).

A third proposal within the package addressed an EU strategy for liquefied natural gas and gas storage. The Commission highlighted the requirement to take full advantage of gas storage and international LNG markets to make the supply system more flexible and resilient, due to geopolitical challenges and

the EU's stark dependence on gas imports. Missing infrastructure for both LNG and gas storage hampered such aspirations; regional differences existed in terms of access to LNG gas supply and some Member States were dependent on a single supplier. Improvements of the infrastructure creating access to international LNG markets, the completion of the internal market to attract LNG and investment in infrastructure, and to engage in close cooperation with international partners to promote free and transparent markets were conceived as a means to exploit the growing international LNG market and to attract new investment (European Commission 2016e). In addition, and interlinked with LNG, EU's gas storage facilities needed to be improved in order to balance the system, enhance gas security and the resilience of the gas supply (particularly in regard to supply disruptions). Therefore, a number of key projects of common interest (PCI) were identified, including transmission, LNG terminals and storage, to end single source dependency and to give all Member States access to LNG. As only a limited number of Member States had sufficiently developed LNG markets, Member States together with national regulatory authorities (NRAs) should aim to complete the internal market, remove the remaining regulatory, commercial and legal barriers, and provide equal access to these markets for all participants. Moreover, transmission tariffs to and from storage varied substantially between Member States and therefore EU-wide network codes should be adjusted and further developed (ibid.).

Lastly, the Commission presented a fourth proposal concerning an EU strategy on heating and cooling. This focuses on the decarbonisation of buildings, as heating and cooling consume half of the EU's energy and 75% of the fuel it uses comes from fossil fuels. The goal should be achieved through the renovation of existing building stocks, together with increased efforts in energy efficiency and renewable energy, bolstered with the help of green electricity and district heating (European Commission 2016f). The communication sets out solutions based on reviews of existing legislation, the Energy Performance of Buildings Directive (EPBD) (European Parliament and Council of the European Union 2010a) and the Energy Efficiency Directive (EED)

(EP/Council 2012a). The reviews seek to further improve national energy efficiency action plans to reduce demand for heating and cooling, and to enhance the energy performance of building stocks. The review of the EED also strives to ameliorate metering and billing information for consumers on energy consumption, as the frequency of metering and billing information may still not be sufficient to provide consumers with accurate real- / near- time consumption data (European Commission 2016f). This will enable consumers to make better informed decisions about their energy consumption and effectively regulate their energy use. Intelligent metering systems also enable frequent billing based on actual consumption (European Commission 2012a). In addition, the review of the Renewable Energy Directive (EP/Council 2009a), together with the EED and the EPBD, seeks to promote renewable energy to speed up a replacement of fossil fuels used in boilers, district heating and combined heat and power (CHP) (European Commission 2016f). Smart systems, smart grids, smart metering, smart homes and buildings should complement the measures to tackle decarbonisation and should be promoted by a modern market design (ibid.).

6.2.5. The Winter Package

On 30 November 2016, the Commission presented another important package of measures in order to create a stable framework necessary to facilitate a clean energy transition, which should in turn significantly contribute to the creation of the Energy Union. In addition, the package aimed to speed up growth and job creation in the energy sector. The objectives of the winter package are subsumed in the Commission's communication 'Clean Energy for all Europeans' (European Commission 2016o). As laid out in the communication, the package should bring about EU leadership in clean energy technology and renewable energies; it should enable the EU to deliver the commitments agreed upon in the Paris Agreement (which was ratified on 5 October 2016), put energy efficiency first, provide a fair deal for customers and

improve the competitiveness of the whole economy. By mobilising 177 billion euros of public and private investment per year, from 2021 onwards, the package could generate an increase of up to 1% of GDP over the next decade and create 900.000 new jobs (ibid.).

The proposals can be grouped into three different categories: proposals amending existing market provisions, proposals addressing existing climate change provisions; and proposals for entirely new measures (Hancher & Winters 2017). Some of the proposals are so-called 'recasts', meaning that a full revision of the legal provision is intended (ibid.) The first category entails a proposal for a new directive addressing the internal electricity market and repealing Directive 2009/72/EC (Electricity Directive) (European Commission 2016g), a regulation addressing the internal electricity market and repealing Regulation 714/2009 (E-Regulation) (Europrean Commission 2016h), and a new regulation on the Agency for the Cooperation of Energy Regulators (ACER) and repealing Regulation 714/2009 (European Commission 2016i). These legal acts were all part of the Third Energy Package, adopted in 2009. The recast of the three acts should enhance "[…]legal clarity. Recourse to an amending act may have been inadequate to address a wide set of new provisions. The choice of the instrument thus calls for a revision of rules already adopted and implemented, as a natural evolution of current legislation" (European Commission 2016g: 12).

The second set of legal provisions addresses climate change goals and how these should interact with the new market design (Hancher & Winters 2017). This set entails a proposal for a new Energy Efficiency Directive amending Directive 2012/27/EU (European Commission 2016j), and a revised Renewable Energy Directive amending Directive 2009/28 (European Commission 2016k). In addition, a proposal for a directive concerning the energy performance of buildings was put forward, amending existing Directive 2010/31 (European Commission 2016l). The third set of proposals implemented entirely new measures (Hancher & Winters 2017). A proposal for

a regulation on risk-preparedness in the electricity sector was published (European Commission 2016m), as well as a regulation on the governance of the Energy Union (European Commission 2016n). The winter package can be seen as a substantial step towards the realisation of the Energy Union, as it introduced novel legal provisions and provided the legal instruments for a redesign of Europe's electricity market, hence deploying a new set of intended goals for the sector.

6.2.6. The State of the Energy Union II

Shortly after the package was published, and in line with the obligation to report annually on the state of the Energy Union, the Commission published the Second Report on the State of the Energy Union, on 1 February 2017 (European Commission 2017b). The report highlighted the progress that was made since the publication of the first State of the Energy Union in November 2015, representing the monitoring process within the policy cycle. In addition, the Commission also published an accompanying document – a staff working document (SWD) - that refined a set of specific key indicators that were conceived to monitor and analyse the progress on meeting the Energy Union objectives. The monitoring approach and methodology in this document built on a former SWD, which was originally developed for the first State of the Energy Union package, and can be understood as a progression of the feedback processes. It was a first attempt to "aggregate a set of relevant key indicators to quantify and measure progress on EU energy and climate objectives and targets" (European Commission 2017c: 6). The new SWD built on these initial steps and was based on feedback from Member States, together with stakeholder opinions gathered from reports and events. It modified and amended the list of indicators, replaced certain indicators with new ones or adjusted them to metrics and data sources, and highlighted where new indicators and better statistical data were needed (European Commission 2017c). Overall, the working document was meant to serve as a powerful tool

to coherently and uniformly assess the progress made in every single Member State regarding the five key dimensions defined in the Energy Union proposal.

The second State of the Energy Union report highlighted trends and policy observations that were of significance for attaining the Energy Union. The report emphasised that overall good progress was made on delivering the Energy Union goals, in particular regarding the 2020 energy and climate targets. It underlined that the Energy Union should be about more than energy and climate alone but a holistic project striving to accelerate the modernisation of the EU's entire economy, making it low carbon and energy efficient, in a socially fair manner (European Commission 2017b). From and institutional standpoint, this can be understood as a widening and deepening of the matrix over time. In addition, the report emphasised the stark importance of the recurring theme of external energy policy, as a fast changing and volatile geopolitical environment that requires a coherent approach to energy diplomacy to secure the long term economic interests and the well-being of Europe and its citizens (ibid.).

In terms of greenhouse gas emissions, in 2015 they were 22% below the 1990 level, and despite a short peak in 2015, carbon emissions followed a decreasing trend. Regarding the renewable sector, and based on data from 2014, 16% of the EU's gross final energy consumption was generated by renewables (ibid.) and an estimated share of close to 16.4% in 2015. Thus, the EU was well on its way to reaching its 20% target by 2020. However, the Commission urged Member States to maintain momentum to reach their national goals. For the EU, renewable energy played a key role for the EU economy, with a turnover of 144bn Euro in 2014 and employing more than one million people (European Commission 2017d). A further important trend was that the EU continued to decouple its economic growth from its greenhouse gas emissions. As depicted in the second report, during the period from 1990-2015, the EU's gross domestic product (GDP) grew by 50 %, whereas carbon emissions, as already mentioned above, decreased by 22% (European

Commission 2017b). With regards to reaching the 20% energy efficiency target, the EU managed to lower its energy consumption significantly, as final energy consumption (the use of energy by end users such as residential consumers, industry, services sector *excluding* energy used by the energy sector) had reached its 2020 target by this point. In 2014 the EU consumed 1062 Mtoe, which was already 2.2% below the targeted 1086 Mtoe as proposed in the 2020 goals (European Commission 2017e).

However, the report also stressed the necessity to empower consumers more effectively, as many consumers still could not participate in the market and additional measures had to be provided to protect vulnerable customers. An assessment of infrastructure revealed that certain interconnections and internal lines to further integrate the internal market were still missing or underused (e.g. Germany, Poland and the Czech Republic). In addition, the next State of the Energy Union report (the third) should single out Projects of Common Interests (PCIs) – a list of key infrastructure projects that link energy systems of different countries and which was published for the third time - where insufficient progress has been made. The report also stressed the necessity to intensify efforts on investment to reach the EU's climate and energy targets, as about 379 billion Euro would be needed every year. To this end, different investment funds – including the European Fund for Strategic Investment (EFSI) and the European Structural and Investment Funds (ESIF) - and other flexible investment platforms should help to advance the work on investments (European Commission 2017b). On the external dimension, not only global leadership should be attained in the field of climate action, but its rule-based liberal market principles should be strengthened in multilateral fora and bilateral agreements to endorse the functioning, integration and the reform of international energy markets (ibid.).

6.2.7. The Clean Mobility Packages

The next building blocks of the Energy Union Project were two ‘Clean Mobility Packages’ (European Commission 2017f; European Commission 2017g), published on 31 May 2017 and 8 November 2017, respectively. Although these proposals shall not be thoroughly assessed, as they lie outside the scope of this thesis, they are mentioned briefly to depict the multileveled nature of the Energy Union and the high issue density it creates (Pierson 2004). The “consequence of issue density is the oft-cited process of spillover: the tendency of tasks adopted to have important consequences for realms outside those originally intended” (Haas 1958, as cited in Pierson 1996:14). Pierson elaborates further that the integration of certain aspects of complex modern societies begets integration in other components, as it proves hard to effectively isolate one unit from the other. In addition, the more tightly coupled different policies are, the higher the likelihood of unanticipated effects and that policy actions in one realm will affect another. “As the density of EC policymaking increases, such interaction effects become more prevalent, unintended consequences multiply, and the prospect of gaps in member-state control will grow” (ibid.: 14). Moreover, as Keohane puts it,

> “one substantive objective may well impinge on another and regimes will achieve economies of scale, for instance in negotiating procedures that are applicable to a variety of potential agreements within similar substantive areas of activity” (Keohane 1982: 340).

An analysis of the two proposals renders the interconnectedness of different policy areas visible. The first set of proposals from March 2017 labelled ‘Europe on the Move’ (European Commission 2017f), proposed a wide set of initiatives that will make traffic safer, encourage smart road charging, reduce CO2 emissions, air pollution and congestion; cut red-tape for businesses; fight illicit employment and ensure proper conditions and rest times for workers. Ultimately, the “long-term benefits of these measures will extend far beyond the transport sector by promoting growth and job creation, strengthening social fairness, widening consumers’ choices and firmly putting Europe on the path towards zero emissions” (ibid.: n.p.). The proposals are reasoned through the

Energy Union strategy of 2015 (European Commission 2015a), which sets the transition to a low carbon, energy efficient transport sector as one of its key areas. The second set of proposals, from November 2017, address the reduction of CO2 emissions of new passenger vehicles and vans, to accelerate the transition to low and zero emission vehicles. Along these lines, the average CO2 emissions of new cars and vans will have to be 30% lower in 2030, compared to 2021 (European Commission 2017g).

6.2.8. The State of the Energy Union III

Shortly thereafter, on 23 November 2017, the Third Report on the State of the Energy Union was published (European Commission 2017h). The report expounds that the Commission has nearly published all proposals necessary to strengthen the EU's leadership in climate action, the energy efficiency first principle, and to provide a good deal for energy costumers. In this regard, the share of renewable energy in the overall energy mix of the EU is still on track to deliver the 20% target in 2020. The cost of renewables is falling (onshore and offshore wind, photovoltaic), which depicts investor's confidence in the technological progress, well-conceived policies and the electricity market reforms. The decoupling of Gross Domestic Production (GDP) and greenhouse gas emissions has continued. Between 1990 and 2016 the EU's GDP increased by 53%, whereas total emissions fell by 23% (European Commission 2017h); compared to a 50 % GDP growth and 22% emission decrease in 2015 (European Commission 2017b). Final energy consumption already reached its 2020 goal in 2014 (European Commission 2017e). The third State of the Energy Union report highlighted that primary energy consumption decreased by 2.5% compared to 1990, however, between 2015

and 2020 the EU still needs to decrease its primary energy consumption by 3.1% to reach the 2020 energy efficiency target.[10]

The Commission warned that, although many positive developments occurred in the energy sector, due to fossil fuel subsidies, a transition to clean energy may be hindered. These distorting practises comprise of subsidies to uneconomic coal mines, capacity mechanisms for emission intensive power plants, tax relief for diesel fuel or company cars and other similar measures. In addition, subsidising fossil fuel also increases the risk to investment in stranded assets, which need to be replaced before the end of their lifespan (European Commission 2017h). According to the report, the Commission has published most of the proposals necessary to facilitate the Energy Union project. However, further important action is needed to complete the Energy Union as the project has reached a "critical juncture" (ibid.: 17)[11]. Member States should therefore accelerate their respective integrated national energy and climate plans to create a hospitable environment for investors, hence generating certainty and confidence in the markets, and the co-legislators should accelerate their efforts to reach swift agreement concerning the proposals. Maroš Šefčovič, the Vice President of the European Commission and in charge of the Energy Union, emphasised that the focal point should now be placed on the European Parliament and the Council negotiations based on the Commission's proposals, to ensure that the Energy Union is "no longer a policy but a well-framed reality" (Politico 2017). Miguel Arias Cañete, the Commissioner responsible for climate action and energy, also stressed the necessity to step up, and stated that "[w]e, at the moment, are in the most difficult part, in acting like honest brokers between the Council and the Parliament" (Politico 2017).

[10] Primary energy consumption is the energy supplied to industry, households, transport, agriculture and transport *including* the energy transformation sector and the energy industries themselves (European Commission 2017e).
[11] Not to be understood as the same sort of critical juncture used in the model proposed in the theory section of this project.

6.3. Taking account of progress – what has been achieved

By the summer of 2019, 14 legal provisions had already been adopted. In regard to institutional endowments, a Member State Official stated that,

> "[t]he project of the Energy Union considerably strengthens the powers of the Commission. It gives them an additional reference point, an additional argument. And I wouldn't say that it strengthens the position of the Member States. It's rather used as a vehicle to transfer more competence to the EU level" (Interview 9, 2018).

It not only strengthens the institution, it also perpetuates an efficient path. As the empirical evidence suggests, the Energy Union seems to provide benefits for Member States, not only from a security standpoint furthering normative obligations (as discussed earlier in this chapter), but also from a market perspective. A Member State Official from the Central and Eastern European region contends,

> "The Energy Union project as such is a very important achievement. We see a lot of benefits that an Energy Union can give us. Our energy policy and our own views are aligned with the topics of the Energy Union and how to move forward, and we also believe in the importance of regional cooperation. And we see a lot of benefits in it. Not only in security of supply but also in costs. If we work together we can produce cheaper energy. If our neighbours produce renewable energy much cheaper, and more efficiently, why should we do it in our own country if it is expensive? We want to do it in a cost-efficient way" (Interview 10, 2018).

Among the adopted provisions for the Energy Union is a revision of Decision 994/2012, the information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy. Moreover, Decision 994/2010 concerning measures to safeguard the security of gas supply was also revised. These two cases were picked for deeper

scrutiny as they were analysed in great detail in previous sections. In addition, as the proposal for Decision 994/2012 faced fierce resistance by Member States, the case provides valuable insight on how path dependent processes entrench actors deeper into the institutional makeup.

6.3.1. Provisions regarding security of gas supply

We will now turn to an assessment of these two provisions. Their content covers sensitive issue areas, which the co-legislators came to terms on following demanding negotiations and which helped to bolster the framework of the Energy Union with promising results. These legal provisions are especially suited to analyse how certain assumptions of HI play out 'in practice' and how policy development unfolds over time within an institution, in terms of the process of path dependency, the short-time horizons of policy makers (where they cannot address future developments based on present opportunities) and the inability of Member States to foresee how decisions at a certain point in time might affect and shape decisions in the future (the phenomenon of unintended consequences).

As discussed in this chapter, Regulation 994/2010 was not a game-changer. From an HI perspective, it was a moderate step in the direction of granting the Commission more competences to influence the external dimension of energy policy and security of supply. As already discussed in the section on the 'Sustainable Energy Security Package', the regulation did not yield the anticipated outcomes and there was still considerable scope to strengthen the EU's preparedness and ability to effectively respond to a gas supply crisis (European Commission 2016p). An impact assessment in 2016 showed that the problem was threefold: behavioural biases (purely national approaches when designing security of supply policies), external factors (the behaviour of third country suppliers was not factored into the design of security measures and the lack of commercial information about the emergency situations), and

technical issues (infrastructure not sufficiently available or not sufficiently protected). This meant that the gas system remained vulnerable to external shocks (ibid.). Some of the deadlines prescribed in Regulation 994/2010 were not adhered to, especially regarding the submission of Preventive Action and Emergency Plans. Moreover, concerning the reverse flow obligation, 32 interconnection points were still not equipped with bi-directional capacity (out of 53 in total). The proposal for a revision of the provisions on the security of gas supply 994/2010 (European Commission 2016b) addressed these issues.

The revision of the Regulation on Gas Security of Supply (EU) 994/2010 was one of the actions identified and framed within the dimension of 'energy security, solidarity and trust', which is one of the five key dimensions in the Energy Union package (European Commission 2016p). Regulation (EU) 2017/1938 was signed on 25 October 2017 and entered into force on 1 November. The legal text is of considerable scope compared to its predecessor; the document is more than double the size of Regulation 994/2010. Provisions concerning the various aspects of supply security are addressed in great depth, including a considerable amount of complexity and a much broader scope than its former incarnations.

In a nutshell, all the policy instruments of the former regulation were incorporated in Regulation 2017/1938, however, provisions were formulated in much greater detail and with less leeway for misinterpretation. Hence, path dependent processes can be attested. The regulation reinforces the role of 'Competent Authorities' (Article 3) and the Gas Coordination Group (GCG) (to facilitate the coordination of measures of Member States concerning the security of gas supply) (Article 4). Article 5 addresses the infrastructure standard (the N-1 formula and bi-directional capacity), however, with a much more complex methodology and a high degree of technical specifications regarding their calculation (as further specified in different annexes). Proposals for enabling or enhancing bi-directional capacity, or for seeking exemption, must be accompanied by detailed cost-benefit analyses based on

multiple indicators. Investment decisions are taken by all Member States if bi-directional capacity is not required by the market, but if considered necessary for the security of gas supply purposes. In order to align risk assessments, and the Preventive Action and Emergency Plans in different Member States (which was a big issue for Regulation 994/2010), the regulation puts forward specific provisions that have to be strictly fulfilled. For instance, it includes a Union wide simulation of gas supply and disruption scenarios, and action and emergency plans have to be clearly defined, transparent, proportionate, and non-discriminatory (Articles 6-10). Regional cooperation is fostered as, based on the identification of major transnational risks to the security of supply, 13 regional risk groups are established, reflecting the main European gas supply routes. These groups should serve as the basis for enhanced regional cooperation and should carry out a common assessment on 'risk group level' (Article 7-2). Different levels of crises – three in total, with different levels of impact - were defined in order to ensure that the respond to a crisis is appropriate (Article 11). From an HI standpoint, these groups provide a mechanism for feedback processes on the basis of coordination, resulting in the adaptation of expectations regarding the performance of the institution.

Most intriguingly, an Article on solidarity was introduced in the regulation. Based on this solidarity principle - in turn founded on Article 194 in the Lisbon Treaty - in the event of a severe gas supply crisis, neighbouring countries would have the legal obligation (as a binding legal mechanism!) to assist each other to guarantee the secure supply of gas to protected customers (including households). This is a fascinating example of how ideational factors permeate an institution, even in a policy area which displays both a very strong notion of market forces and security concerns, associated with 'high politics'. Moreover, under such circumstances, Member States who provide another Member State with gas must "take the necessary measures to ensure that the gas supply to customers other than solidarity protected customers in its territory is reduced or does not continue to the extent necessary and for as long as the gas supply to solidarity protected customers in the requesting Member State is not

satisfied" (Article 13). This means that a Member State is legally obliged to decrease the supply to its own commercial entities to satisfy the gas demand of protected customers in another Member State. Indeed, a strong provision that instigates ideational momentum and displays a strong normative connotation. Of course, such measures are only be taken as a last resort and when market-based measures and measures defined in emergency plans are exhausted. From an economic standpoint, it is intriguing that in terms of the exchange of information, the regulation also requires Member States to communicate all contracts with suppliers that account for 28% of annual gas consumption in a specific Member State. This obligation applies to commercial undertakings, however, the "notification obligation shall not cover price information" (Article 14). Self-evidently, the Commission has to monitor the implementation of Regulation 2017/1938, report the outcome to the European Parliament and the Council, and, when necessary, recommend the amendment of the regulation (Article 17).

Compared with the previous regulation, even a critical voice must admit that the new legislation is significant. The regulation is the spearhead of attempts to foster security of supply and enable the Union to act in the case of a supply crisis. When comparing the first security of supply *decision* of 2004 to this *regulation*, the very first policy instrument appears weak, with no added value for the institution. From a HI point of view, the gradual and incremental development regarding instruments addressing the security of supply is invaluable evidence of incremental change and path dependent processes.

6.3.2. Provisions concerning energy related intergovernmental agreements

The provisions on the information exchange mechanism on intergovernmental agreements and the security of gas supply regulation offer especially fascinating cases for further examination, as they directly affect the EU's capacity to shape the contracts and the relations of Member States with third country suppliers. Both considerably strengthen the legal powers at the EU's

disposal and touch upon energy policy apprehended as *high politics*. They address certain aspects of supply security, for instance, the dependence on gas supply from Russia and energy prices associated with the supply contracts. Member States (at least some of them) have vested interests to keep such contracts within the intergovernmental sphere of energy policy. These contracts directly address and affect the basic functions of a Member State and they define whether certain Member States obtain more favourable conditions than other Member States. Energy prices for both wholesale and retail markets are heavily affected by these contracts and directly correlate with the productivity of Member States, prices on the retail sector (with vulnerable consumers amongst them), the attractiveness for investors and the welfare of a Member State in general. In this regard, both decisions constrain Member States' possible options regarding how to engage with third country suppliers and strive to foster the creation of a level playing field for all 28 Member States[12].

In order to fully understand the importance of Decision (EU) 2017/684 (EP/Council 2017), we must turn our focus to its predecessor Decision 994/2012. In hindsight, an assessment of the effectiveness of Decision 994/2012, establishing an information exchange mechanism regarding intergovernmental agreements (IGAs) with third states, which was adopted by the Council and the European Parliament on 25 October 2012, shows quite mixed results. As already laid out in a previous section, the decision obliged Member States to inform the Commission about all *existing* bilateral agreements with third state suppliers. Decision 994/2012 should enhance transparency, and create solidarity and confidence between Member States. The decision was conceived to ensure that IGAs are strictly aligned with EU law, that they respect and follow existing internal market rules, and that IGAs bolster and reinforce the EU's energy security strategy. After submitting an IGA to the Commission, the Commission would then have nine months to

[12] Please note, at the time of writing, Brexit, whilst imminent, had not yet occurred.

assess whether the agreement was in-line with existing legal provisions or not. In addition, Member States "should have the option of informing the Commission of a new intergovernmental agreement with a third country before or during the negotiations thereof" (European Parliament and Council of the European Union 2012a: 14). The Commission should also have the option, on its own request, to participate as an observer, however, only if the Member State under scrutiny agrees. Member States, on their part, should have the possibility to invite the Commission to assist them during negotiations with third countries. The decision also obliged the Commission to report the effectiveness of Decision 994/2012 to the European Parliament, the Council and the European Economic and Social Committee (ibid.).

The crux and serious shortcoming of Decision 994/2012 was the *ex post* assessment of IGAs, where Member States had to report the IGAs only *after* the agreements were concluded. As these agreements are subject to international law, under the regime of Decision 994/2012, if an IGA was found to violate EU energy law, it was very difficult or even impossible to renegotiate these agreements, due to political factors and legal reasons. Based on an impact assessment carried out by the Commission as required by Decision 994/2012 (Art. 8), around one third of the notified IGAs, which were highly relevant, contained provisions that were not compliant with EU law[13]. In addition, some of these non-compliant IGAs created very complex legal situations within Member States, between Member States, and with third countries (European Commission 2016q). In terms of effectiveness of the IGA decision as the *policy outcome*, the Commission concluded that while the decision was generally useful to identify IGAs that were incompatible with EU law (ibid.), it did not manage to transform concluded non-compliant IGAs into compliant ones. Moreover, the decision did not directly impact Member States' negotiations with third countries (European Commission 2016d).

[13] For instance, those related to energy infrastructure or the supply of energy commodities.

Member States fiercely opposed the decision as they deemed it to heavily infringe on their sovereignty given the delicacy of the subject matter during the negotiation process. They worked hard during negotiations to retain their power (Interview 1, 2018). As we can see, Decision 994/2012 was a double-edged sword in terms of its effectiveness. On the one hand, the Commission tried to 'get a foot in the door' regarding Member State's agreements with third countries. It established a legal provision that shifted energy policy away from a market-centred approach (addressing the external dimension of energy policy via the internal market), towards an approach that bestowed legal powers upon the Commission, that would grant it a more assertive role in the external dimension. On the other hand, and as the obligatory assessment has revealed, although the provision represented a novelty in terms of its content, it showed no effectiveness in terms of creating a level playing field for all market participants, since the IGAs could not be altered in hindsight. Solidarity, a binding force emphasised in the provision, was hence not properly addressed.

The revised version on IGAs, Decision (EU) 2017/684 (EP/Council 2017), is a completely different kind of animal in this respect. According to Roeben (2017),

> "the Commission's oversight has been strengthened, procedurally and substantively. The reformed decision provides for obligatory *ex-ante* review of binding agreements on gas and oil, which will have a suspensory effect. Member States remain able to sign the agreement but will have to take the 'utmost account' of the Commission's opinion" (ibid.: 222-223).

This development can be seen as very strong evidence supporting the claim of HI that unintended consequences affect actors when embedded in an institutional setting. Some very powerful Member States, with Germany, Italy and France amongst them, were *against* an ex-ante assessment of intergovernmental agreements, when the first Decision was negotiated in 2012. However, due to the Energy Union project of 2015 (European

Commission 2015a), which itself was heavily strengthened by the conclusions of the European Council in December 2015 (European Council 2015), the revision had to be much more ambitious than its predecessor. The European Council decision of December 2015 made unmistakably clear that *all* further legislation must be aligned with the Energy Union goals and the decision strengthened the obligation to embrace the notion of solidarity where energy provision is concerned. In addition, the Parliament pushed for strong provisions in the decision and the President of the European Parliament's Energy Committee, Jerzy Buzek (EPP, Poland) praised the excellent proposals of the Commission (Agence Europe 2016). Thus, formerly reluctant Member States had no choice but to agree to the proposed amendments of the Commission. As Member State Official stated,

> "the Energy Union project is more than the sum of its constituent parts. And the European Council decision of December 2015 was the catalyst to help the IGA decision come to life" (Interview 8, 2018).

Decision (EU) 2017/684 was adopted on 5 April 2017(EP/Council 2017) and improved the institutional framework to a considerable degree. This time, it did not face the strong opposition from Member States that it had during the negotiations of the first decision due to constraints of possible policy options. The reviewed decision introduced a mandatory ex-ante assessment of IGAs concerning their compatibility with EU legislation by the Commission (Article 3-2). The European Parliament suggested a broader approach in terms of its application, addressing all IGAs related to gas, oil, and electricity. However, a compromise was reached. Only IGAs related to electricity will be subject to ex-post compliance checks for the moment, however, a review clause leaves room to introduce ex-ante checks at a later stage (European Parliament 2019).

As Jacek Liegman, DG Energy, who took part in the legal design of the decision, states,

> "The key revision is the mandatory ex-ante mechanism for gas and oil. The mandatory ex-ante mechanism was certainly the most difficult part

> to negotiate. Because you have to see that it is very important and a powerful tool. Compliance with our EU law ensures the security of supply, so it is not purely a legal exercise. The revision ensures that the IGAs not only comply with the Third Energy Package but also with other pieces of EU acquis" (Interview 5, 2018).

Diverging from the first decision, Member States now have the obligation to inform the Commission *before* they enter into negotiations with third countries to conclude or amend an IGA (for both gas and oil), and have to keep the Commission up to date about the progress made (Art. 3-1). When a Member State gives the Commission notice of negotiations, the Commission has the option to provide it with advice on how to ensure compatibility with Union law; such advice might also include optional model clauses and guidance (Art. 4-1). As soon as an agreement has been reached, but before the closure of the formal negotiations, the full text should be sent to the Commission for an ex-ante assessment (Art. 3-2). Consistent with the first decision, the obligation to notify the Commission does not apply to commercial entities (Art. 3-6). The Commission should then inform the Member States within five weeks whether it has any doubts as to the compatibility with Union law (Art. 5-1). The Member State shall not sign, ratify, or agree to the draft IGA until the Commission has informed the Member State of any doubts (Art. 5-4). "The Member State concerned shall take utmost account of the Commission's opinion" before signing, ratifying, or agreeing to an IGA (Council / EP 2017: 8).

As the evidence suggests, Decision (EU) 2017/684 turned the tide in favour of the Commission and strengthened the institutional matrix. Of course, the effectiveness of the decision can only be assessed in hindsight when, based on Article 10, the Commission will publish a report on its application which will contribute to further feedback. In the words of Borchardt (2018),

> "[r]egarding the intergovernmental agreements, we strengthened our role because now Member States have to notify us before they conclude an agreement. I think we can work with the revision. Not all IGAs were

> compatible with our third energy package in 2013. And we were preparing infringement procedures. That was the first shock and the Russians made a big fuss. Decision 994/2012 was also based on Article 194 of the Lisbon Treaty, as is all energy legislation. If you have the competence internally then you can exercise it externally." (Interview 11, 2018)

In summary, the empirical evidence supports the fourth hypothesis that if a situation of critical juncture occurs within a setting of low institutional stickiness, high integration can be expected. Integration occurred as non-incremental change of primary legislation in the form of the Lisbon Treaty. The Treaty altered the institutional trajectory to a significant degree, as different dimensions of energy policy were incorporated. After the critical juncture occurred, the institution fell back into institutional equilibrium and a process of moderate integration of secondary law was triggered. Secondary law was amended in the form of revisions of the gas security regulation and the decision on the information exchange mechanism concerning IGAs. Moreover, the Lisbon Treaty strengthened institutional capacities as exogenous factors could now be directly addressed, which ultimately led to the Energy Union project.

Conclusion

This research project addressed the question *under what conditions does integration occur in the policy area of energy over time* and tested four hypotheses to answer the question. The question, which was broad in its scope, sought to identify general preconditions that must be met in order to facilitate further development of the institutional matrix in EU energy policy. Most importantly, an emphasis was placed on the temporal processes and how historical contingency influences policy-making in the energy sector (as opposed to research that focuses on the analysis of decisions at a specific moment in time).

This research project offers a significant theoretical contribution to the literature on Historical Institutionalism in three distinct areas. Firstly, it develops a succinct approach to the operationalisation of key concepts, specifically the notions of path-dependence, increasing returns and positive feedbacks, institutional stickiness and institutional lock-in. Secondly, this research offers a typology for critical junctures. And, thirdly, it advances a framework that incorporates both rational choice and normative factors as determinants of energy policy decision-making. Although concepts of path dependence are explored by different HI scholars (see Arthur 1988, North 1990, Thelen & Steinmo 1992, Pollack 1996 & 2008, Pierson 2000 & 2004, Peters et al. 2005, Fioretos et al. 2016), attempts to operationalise these processes have often fallen short of methodological rigour. Moreover, different scholars attribute different meanings to each concept, or use some of the terminology interchangeably. To address these challenges, this project's first contribution to HI theory is the development of a typology of institutional stickiness and a systematic approach to operationalise path dependent processes. It offers a means by which to operationalise a complete institutional lock-in, where the institution is incapable of altering its institutional trajectory, and a way to demonstrate path dependence, in which the institution is still inert, but capable of slow and gradual change. The project offers a comprehensive

methodological approach to measuring path dependence, by developing a model of a full policy cycle, dependent on the analytical dimensions of intended goals, policy output and policy outcome, and their relationship with positive feedback processes involving monitoring and different institutional players. The project advances an approach to operationalise increasing returns, which are themselves based on learning effects, coordination effects, the development of adaptive expectations, and network effects. The institutional matrix and specific institutional players instigate such developments, and these phenomena in turn contribute to path dependence.

Secondly, this project identifies different forms of critical junctures. Critical junctures, which play an important role in many contributions to HI, and which are part of the notion of a punctuated equilibrium, are a valuable approach to conceptualising institutional change. This research shows that different forms of critical junctures exist. In this sense, the theoretical model moves away from a binary conceptualisation of critical junctures, in which a critical juncture either occurs or does not. Critical junctures exist on different levels: they can affect the institutional framework in its entirety, and as a consequence of their impact, amend primary legislation and lead to fundamental reform of the institutional matrix. However, smaller critical junctures also exist for specific sectors: they can have an impact on the lower level(s) of an institution but will not change the wider institutional framework. These smaller critical junctures are important for a specific policy area, but do not lead to an amendment of the institution and its rules in the form of primary legislation. Consequently, they will lead to an amendment of secondary law, but will leave the overall institutional framework unaltered. In order for smaller critical junctures to unfold their full potential, primary law must address the sector which is affected. External shocks (for instance, oil crises) can create critical junctures that impinge on secondary legislation. But it is important to note that the institution's capability to absorb / react to these external factors and shocks, thus creating a critical juncture for a policy sector, is dependent on primary legislation.

The project's third contribution to HI is its advancement of a framework that bridges the dichotomy of rational motivations vs ideational motivations in terms of preference formation, which has created a long-standing rivalry between Rational Choice Institutionalism and Sociological Institutionalism. Such considerations greatly enrich our understating of institutional continuity and change, and what kind of logic informs the formation of preferences during the decision-making process. How preferences are formed is a very important question within the institutional literature, as it explains whether actors make specific choices on the grounds of calculated self-interests (the calculus approach) or whether decisions are informed by ideational factors and norms and values (the logic of appropriateness). This research shows that the formation of preferences is dependent on the context of a specific situation. For instance, in the early days of energy policy we saw a highly rigid institutional framework based on primary legislation, which structured the behaviour of actors. Decision-making was very much based on rational calculations of actors who behaved in a self-interested manner. In addition, events like the oil shock of 1973/74, together with the institutional framework, created a situational context in which the formation of actors' preferences were informed by strategic calculations – they deemed bilateral agreements more advantageous than strengthening the institutional framework and acted accordingly. However, this situational context changed over time – most importantly, via institutional amendments in primary law. The introduction of QMV made the institution more agile and flexible, and more responsive to exogenous factors and endogenous ideas. Under new institutional rules in the form of the SEA, and later the Lisbon Treaty, the situational context changed considerably, and addressing the external dimension under the normative notion of *solidarity* in Article 194 TFEU, broadened the scope of what could be achieved at the EU level. Hence, the normative obligation to demonstrate solidarity in times of crises represents a significant shift in this respect. It was easier to react to the gas crisis in 2009 than during the first two oil shocks in the previous decades, when virtually no solidarity existed. The project of the Energy Union was framed around solidarity between Member States and the

obligation to work together to improve energy security. Hence, this project has shown how the situational preconditions (the institutional context but also exogenous factors) define whether actors base their decisions on self-interested calculations or whether they are also guided by ideational factors, such as solidarity.

7.1. The Four Hypotheses

The thesis was based on four hypotheses which tested assumptions about the factors that lead institutions at times to be rigid, and at other times to be susceptible to change. Chapter III tested the first hypothesis, which posited that, in the absence of a critical juncture, a locked-in institution - displaying high institutional stickiness measured with the help of the proxy variable of unanimous voting - will rigidly stay on its institutional path. The hypothesis was confirmed. The evidence analysed shows that the institution was incapable of generating *almost any policy output* from the 1950s to the 1980s, although *intended goals* were defined. Interestingly, although exogenous events in the form of two serious gas crises impacted the institutional matrix, they had limit impact on the regulatory framework. The reason identified in the analysis is the fact that the energy sector, apart from coal and gas, was subject to unanimous voting in the Council. Hence, almost all far-reaching policy proposals were bogged down, making it impossible to implement a common policy approach.

Chapter IV tested the second hypothesis, which proposed that when a critical juncture occurs within a setting of high institutional stickiness, moderate integration of primary law can be expected. Supporting this hypothesis, the evidence highlights that both exogenous and endogenous factors led to a critical juncture, and to the SEA as an outcome and a change of primary legislation. This finding is significant as it enhances our understanding of the constituent parts leading to critical junctures for primary law in the context of

the EU. Exogenous factors presented themselves as economic pressure exerted by fierce competition outside of the Communities on global markets, and a second oil shock that contributed to insecurity of energy markets. Endogenous momentum was present in the form of 'Eurosclerosis', the institutional malaise, which took hold of the entire institution and contributed to an inefficient institutional setting. The Luxembourg Compromise, which created the requirement to reach decisions by unanimity, contributed to a locked-in institution and an ideational crisis based on the perception of the Communities own political identity unfolded. At the time of this critical juncture, the SEA was the solution to the institutional malaise, for decision-making in energy policy, and for the institution in general. Moderate integration in the form of non-incremental change of primary legislation under the SEA can be attested. The hypothesis is confirmed through the empirical evidence that, although energy policy could henceforth be addressed through market provisions and secondary legislation, it was not directly mentioned in primary legislation.

Chapter V tested the third hypothesis, which proposed that if no critical juncture occurs in a setting of low institutional stickiness, a moderate level of the process of integration can be expected. The hypothesis was confirmed. Integration occurred in the form of incremental change of secondary legislation and no critical juncture punctuated the institution. Based on the empirical evidence, *intended goals* were formulated, leading to *policy output* that addressed the predefined set of goals. The effectiveness of the policy output was measured and it was shown that early decisions had less impact on the policy output than later decisions. In terms of the three energy packages, a gradual increase of the *policy outcome*, understood as the effectiveness of the *policy output*, can be measured. Hence, a moderate increase of integration over time is identified. The institution developed structural constraints and entrenched actors more and more into the institutional matrix. Although some Member States showed varying degrees of resistance to policy measures, they

ceded more and more powers to the institutional framework over time, agreeing to enhance the institutional matrix.

Chapter VI tested the fourth and final hypothesis, which proposed that a critical juncture in a setting of low institutional stickiness leads to high integration in the form of change in primary legislation. This last hypothesis can be confirmed as well. The outcome of the critical juncture was the Lisbon Treaty, which overhauled the institutional framework. For the first time, energy policy was mentioned in primary legislation and was given its own title. Thus, measuring the difference of the level of integration between the SEA (where energy policy could be addressed but was not explicitly mentioned) and the Lisbon Treaty (where energy became a *formal* competence of the EU), shows that a high level of integration took place. Decisions addressing the dimensions of the internal market, energy security, energy efficiency and the promotion of renewables, and energy networks can now be made via the ordinary legislative procedure. However, after the critical juncture, the institution fell back into equilibrium and a process of medium integration was instigated. As the evidence has shown, an incremental increase of the effectiveness of the policy output (the policy outcome) can be measured. Secondary legislation was altered in a stepwise manner, based on former policy instruments, without introducing completely novel provisions. Moreover, unintended consequences unfolded for Member States, as the institution slowly tightened the institutional framework and entrenched actors over time: Member States agreed to provisions and policy measures they would not have accepted earlier in the sequence.

7.2. Contribution

This research project contributes to the wider debate about (European) integration, the functions that institutions fulfil, the motives of actors complying to institutional rules, and the factors that contribute to continuity on the one

hand, and account for change on the other. In a narrower sense, the project analysed energy policy as a particular part of the institutional matrix which, although showing a low level of integration at the beginning of the European Communities, became an important constituent part of the institution over time, cumulating in the inception of an Energy Union framework. An important driving factor for integration was identified as the demand for an integrated market and a secure supply of energy, steered and constrained by the institution. Derived from the empirical insights and theoretical contributions of this thesis, a picture was drawn that explains institutions on the basis of their inherent inclination to generate path dependent processes addressing markets and security concerns. If we consider the finding with regards to the contribution this thesis makes to our understanding of the conditions under which policy making takes places in the energy sector, a number of points warrant further discussion. Five analytical units will be emphasised as they were identified as the most important for policy development: the formation of preferences, institutional continuity and change, unintended consequences for involved actors, and critical junctures.

Explaining preferences, institutional continuity and change

As the analysis has shown, decisions in EU energy policy were very much dependent on earlier decisions. The empirical evidence presents a policy framework that is subject to incremental change (or at times even no change at all). The Historical Institutionalist scholar understands developments in the political world as events that have their roots in the past, which shape, enable and constrain the range of possible choices of decision makers in the future. This proposition is confirmed by the analysis in this project; the energy sector is no exemption from this rule. Contemporary policy instruments always had their roots in former decisions. Another important insight is the observation that decision-making is structured by, and contingent on, institutions that deliver functions based on formal rules that mediate between different actors and their interests (and preferences), but also on informal rules that help to shape

actors' views about appropriate behaviour and enable actors to create new ideas about how to alter the path of the institution from within.

This is a very contentious topic within the scholarly debate of Institutionalism as some researchers regard institutions as being governed by a logic of consequence / rationality (for instance Pollack 2008), whereas others emphasise that institutions provide moral and cognitive templates for behaviour, which ultimately creates the capacity to account for change from within (Steinmo 2008). However, this thesis goes beyond this dichotomy and aligns with the work of other scholars who have widened the historical institutional framework in both directions (Katznelson & Weingast 2005, Steinmo 2008). Specifically, this project sits within a growing body of HI scholarship that engages with both rationales, a more actor-centred approach (Sheingate 2003; Berk, Galvan, and Hattam 2013), and which allows for ideational values to be incorporated (Peters et al. 2005). A major contribution of this thesis is to account for variations in the situational context which defines whether actors follow rules/norms or whether they strive to maximise their own interests. As shown in the empirical chapters, how actors behave very much depends on the specific *situational context*, and which logic informs the formation of their preferences. Moreover, and this is a significant observation, the institution always needed some form of endogenous momentum to change the structural framework of the institution. It always needed endogenous *ideas* about how to change the institution. This most importantly also applied in the context of *energy markets*, in which preferences are regarded as exogenously given and governed by rational decision-making.

Indeed, an important motive for deeper integration was identified as economic deliberations based on the goal-oriented behaviour of actors, who were not satisfied with the status-quo in the 1980s (Giersch 1985), which led to the SEA. Since energy plays such an important role for modern economies and welfare states, economic calculations played a prominent role in decision-making. Market-based policy instruments were seen as the appropriate means to

regulate the sector and to create a level playing field that governs both the internal and external dimension. Indeed, the energy packages and their regulatory capacities can be regarded as effective policy instruments that administer the internal energy market. Starting as provisions that showed moderate effectiveness of the policy output, they gradually developed towards a regime that was considerably tightened, strengthened, and much more effective. Based on rational decision-making and deeper economic integration over time, the provisions in secondary legislation addressed a multitude of economic issues and technical and operational procedures in order to facilitate sectoral integration. Within the boundaries of institutional preconditions and constraints, policy was incrementally changed.

However, the evidence analysed also suggests that endogenous momentum, founded on ideational factors and novel ideas about how to govern markets, was important in the context of instigating change within the institutional framework. A strong account for normative factors permeating energy policy is the notion of solidarity embedded in institutional rules. Mentioned in Directive 2004/67/EC for the first time, and subsequently implemented in primary legislations, the notion of solidarity amongst Member States in times of a crises incorporates a strong endogenous ideational building block in the regulatory framework. In times of crisis, markets reach their regulatory limits in terms of energy security, yet need to be stabilised, as energy is a strategic and politicised commodity. Not only from an economic, but also socio-economic standpoint, where protected customers need to be satisfied at all times, energy must be supplied even in the most difficult scenarios. As a consequence of such deliberations, solidarity as a normative value was woven into the institutional framework to ensure a secure energy supply. Member States now even have the *legal obligation* to help each other in times of crisis.

> “[T]here is also a normative requirement for a common energy policy. The European Union Treaty is more than an economic treaty. It also fosters cohesion and solidarity between member states. There is no

point in having a Union if some of its members literally leave others in the cold" (Andoura et al. 2010: 7).

As discussed in the theory section, institutional change will occur when powerful actors have the political determination to alter the institution in favour of new ideas and re-interpret the institutional status quo (Hall 1989; Hall 2010; Steinmo 2008; Blyth et al. 2016). Not only can these 'new ideas' be implemented to overcome collective action problems (in the case of the single market programme), but ideational factors also play a role in the form of normative implications for the institutional makeup. Ideational factors are embedded in the institutional matrix, and played a role in the context of the decision-making procedure agreed upon for the implementation of the single market programme (Eising 2002; Eikeland 2011b). As discussed in the section on *Preferences informing policy making after the SEA*, in Chapter V, it was agreed that directives concerning the gas and electricity sector should be decided in accordance with Article 100a EEC, which was a consensus-based decision-making procedure.

Although DG COMP strived for a much more aggressive approach, based on unilateral action, large parts of the Commission, the Council and the Parliament opted for a stepwise procedure and a more inclusive approach of the co-decision procedure, that required both the European Parliament and the Council to agree to a new directive. In the end, this view was shared by the European Court of Justice (ECJ) who ruled against the position of DG COMP. Moreover, this normative approach based on reaching a consensus was not only applied to the decision-making procedure but also the norm for reaching decisions within the Council. Although QMV could be used by Member States to outvote each other on salient issues, the Council strives for consensual solutions that are acceptable for all actors. Hence, the evidence provides a strong account that endogenous institutional norms also influence the institutional trajectory and must be considered for a thorough assessment of an institutional matrix.

As explored in Chapters V and VI, after the SEA change was also not easy to facilitate as the institution became rigid and developed a form of institutional inertia that contributed to resisting spontaneous alterations of the institutional framework. Merely incremental steps were possible within the institutional setting. The institutional design, initiated by actors, prohibited any swift amendments; the framework was designed in a way that pre-empted fast alterations to purposefully lend it more stability and so that it could not be easily altered by actors with diverging preferences. This institutional rigidity is moreover based on, and reinforced by, increasing returns and path dependent processes which additionally entrench actors over time. Indeed, as the analysis highlights, decisions that were made at an early stage shaped the possible range of policy options later in the sequence. The research shows that once actors conferred powers to the institutional matrix, and once initial policy decisions were made, the development of policy instruments was contingent on initial decisions and the scope of competences conferred to the institution.

If a policy area can be found in the intergovernmental domain, and primary law does not provide the slightest capabilities to address policy making in the specific sector, the ‘default condition’, the status quo is almost endlessly perpetuated (with only some minor exceptions). In this case, adaptive expectations and coordination effects were not triggered and, due to the absence of increasing returns, the institution itself was locked-in and dysfunctional (on the basis of the joint-decision trap), and sovereign interests dominated policy making. Institutional development in energy policy needed some degree of political will of decision makers, above all to define rules, at the expense of their own sovereign powers on how to govern the sector, enshrined in primary law. This willingness is considerably heightened as a result of critical junctures. In the case of a locked-in institution, as we saw in Chapter III, change is almost impossible to facilitate. Institutions fulfil specific purposes, amongst them reducing uncertainty, enforcing contractual

arrangements and reducing transaction costs. However, in the absence of willingness to cede powers to the institution - even if preliminary 'pro-forma' goals were agreed on as intended goals – no real momentum for institutional development was attained. As shown in Chapter IV and VI, in order for the institution to develop, willingness to shift powers to the institution must be accounted for in primary legislation, and unanimous voting must be suspended. For instance, the Council's statement in the early 1960s that the "(e)xecutives need not confine themselves to the legal possibilities afforded by the existing treaties" (High Authority 1964a: 73), and to go beyond existing legal provisions, serves as evidence for Member States' realisation that imminent issues in the energy sector had to be tackled. However, in the end "it proved to be impossible to secure the Council's unanimous acceptance of the draft resolution" (ibid.: 78).

Pollak and Slominski (2011) contend that "the existence of the joint-decision trap may help in understanding the difficulties involved in creating an internal energy market", however, "it cannot explain the progress which has already taken place" (ibid.: 93). They argue that, "it has been the driving force of the European Commission which has been willing to exploit various formal and informal instruments at its disposal" (ibid.). This research project argues that it is not necessarily the Commission, but rather the design of the institution that facilitates the advancement of a policy area. If the above statement would be entirely plausible, the relentless Commission proposals over almost 40 years would have been more fruitful. Endeavours to create a common approach to energy only materialised in the 1990s. Whilst the Commission has the capability to improve the institutional rules, actors must agree to the institutional design, and bestow the Commission with the capacity to instigate change. Hence, the joint-decision trap is rather a symptom of a sub-optimally designed institution, as opposed to one in which certain actors are more important than others.

In order to have the capacity to react to specific developments in the sector – for instance, to efficaciously respond to exogenous factors such as supply crises - the specific aspect of the sector had to be addressed in primary law, to create preconditions that made incremental institutional change possible. This was the case for the internal dimension of energy policy, addressed by the three liberalisation packages as a consequence of the SEA. As soon as the internal dimension of energy policy was subsumed under the general internal market programme, the way was paved for the gradual development of secondary legislation on market liberalisation. However, it was more difficult for external energy policy, since external affairs were not part of the internal programme; no legal basis existed for a common external policy. Hence, the external dimension of energy policy had to be included under common market provisions; it was implicitly assumed that provisions on the internal market would also have the capacity to regulate external issues. As the analysis in Chapter V shows, in the case of the gas crisis of 2006, such assumptions did not materialise and the institution stayed rigidly on its path, although exogenous factors penetrated the institution. Institutional change was difficult to achieve. However, the Lisbon Treaty solved this shortcoming and made it possible to address the external dimension more directly, cumulating in a swiftly implemented Regulation on the security of supply, triggered by the second gas crisis in 2009.

Unintended Consequences

The analysis highlighted that institutions led to outcomes that had inadvertent consequences for some actors and their initial primacy regarding their institutional choices was to some extent lost. For instance, the analysis of the development of the three market packages in Chapter V underlined how early provisions were much less ambitious than later ones. Over time, actors had to subscribe to policy measures which they initially rejected / resisted, as they were not aligned with their preferences. However, as actors pursued specific institutional paths rooted in earlier policy decisions, their available options

became more constrained. As a consequence, later decisions had a much greater magnitude and introduced policy measures that actors did not anticipate during the inception of the policy instruments.

Rational choice institutionalism, which is a purely interest-based and actor-centred framework, would suggest that actors are always in full control of their policy choices, with all the necessary information available (Shepsle 2006). From this perspective, institutions are equilibrium outcomes, arbiters between different actors, and 'managers' of their contractual commitments. However, based on the empirical evidence analysed, such assumptions are not fully supported. Without neglecting that rational decisions can be made, this analysis confirms that "configurations of institutions created in the past structure politics in the present and in ways that often run counter to the interests or preferences of individuals" (Fioretos et al. 2016: 6). A prevalent example of this is the decision on the information exchange mechanism for intergovernmental agreements (IGAs).

The initial proposal of 2011 faced fierce opposition from Member States due to the proposed ex-ante assessment of IGAs (which was eventually relinquished). However, the revision (after merely 5 years) successfully implemented such provisions. We could even widen the example and say: Member States would not have predicted that their IGAs would be scrutinised during the negotiations of the Lisbon Treaty, which created the preconditions for all decisions addressing energy security. Thus the decision on IGAs is an example of *unintended consequences* par excellence. However, as North (1990) contends, once an "adaptively efficient path" is pursued, as in the case of energy policy in the EU, a "maximum of choices under uncertainty" is provided by the institution (ibid.: 99). The 'adaptively efficient path' allowed for the "pursuit of various trial methods of undertaking activities, and for an efficient feedback mechanism to identify choices that are relatively inefficient and to eliminate them" (ibid.). Based on this research, although actors found

their choice of preferences constrained by the institution, in the end, the institution provided them with efficient outcomes.

Explaining critical junctures

The analysis of the empirical evidence has yielded a very important insight, which was not anticipated in the design of the theoretical model. From the analysis one can identify an important distinction regarding critical junctures. We must differentiate between critical junctures that affect primary law, and critical junctures that affect secondary law. The first creates a situation in which pervasive driving factors initiate structural reform and alterations to the fundamental design of the institution, in the form of a change in the treaties. Thus, punctuations of this sort instigate very extensive and deep alterations to the institution and very specific outlines and principles to govern the institution are set out. Primary legislation defines the fundamental features of an institution, the responsibilities of the different actors and how decisions are reached. In this case, the alterations are very powerful and change the institution in a way that affects the very core of the institution and fundamental rules for policy-making.

In contrast, critical junctures for secondary legislation are understood as smaller events that punctuate the trajectories of (a) specific policy area(s) inherent to the institutional design, and which develop the capacity to alter secondary legislation. However, these smaller events do not generate enough impetus to affect the entire institution but rather influence specific components of the institution (for instance, secondary energy legislation). Moreover, smaller events and their respective impact on the institutional matrix are contingent on the prerequisite of whether primary law addresses the policy area to some extent or not. Secondary law, embodied in regulations, directives and decisions are grounded on, and govern the policies that are set out in, primary legislation.

Therefore, we can conclude that some very fundamental and pervasive formative moments create momentum for a change of primary law (due to strong critical events that affect the institution as a whole), and others, in some circumstances smaller events create momentum for change in secondary law but not in primary law. Hence, the latter creates momentum for institutional change on a 'smaller scale'. This distinction is an important one as smaller events might have to be accounted for as a driving factor for a specific policy to change its path. For instance, Regulation 994/2010 on the security of gas supply and the proposal for the Energy Union are good examples for such assumptions. Both were instigated as a consequence of strong exogenous events[14] impacting the institutional framework and the main driving factors for the respective policy proposals. However, these junctures did not have enough of an impact to change the institutional design in its entirety. In the phases of path dependency, and when the overall institution is in equilibrium, smaller critical junctures alter the trajectory of, or instigate new, specific policies. Especially exogenous events that affect the workings of a specific part of the institution, can create this form of critical juncture. The institution is punctuated by such 'small' events and therefore the trajectory of a specific part of secondary law is altered.

7.3. Challenges and Potential Criticism

One of the main challenges of this project was developing an analytical model for critical junctures. If asked whether this research has enabled the identification of critical junctures before they happen, the simple and straightforward answer would be: no. As the analysis has shown, the nature of a critical juncture, and the factors that contribute to it, are unique and therefore it is not possible to create rules which could be universally applied. Every critical juncture consists of idiosyncratic constituent parts, which develop as a

[14] Two gas crises for the former, geopolitical unrest following the annexation of the Crimean Peninsula for the latter.

result of historical contingencies, and which are concatenations of events occurring in a particular sequence and within a particular context. This analytical opacity makes them difficult to grasp *ex-ante*. Nevertheless, critical junctures can be understood *in hindsight*, as the unique factors contributing to a critical juncture become clear and their causal relationship can be understood. That said, as supported by the empirical evidence analysed, we can conclude that critical junctures for the institution in its entirety are made up by both exogenous and endogenous factors. For instance, the events leading to the SEA were based on endogenous and exogenous factors. However, such claims would need to be investigated further.

A second potential criticism is the focus on critical junctures affecting the institution in its entirety (leading to change in primary law), and the omission of a stocktake of critical junctures for secondary law. It could be argued that, in the case of energy policy, more critical junctures existed than are actually depicted in this research project. However, it should be noted that the goal of the project was not only to account for change in secondary law, but to explain the wider institutional context, which was the prerequisite for the overall conditions under which deeper and wider integration occurred. In virtue of this understanding of the institutional core in which energy policy is embedded, the analysis focused on the structural conditions guiding the formation of formal and informal rules. Based on these research aims, parameters had to be set in order to ensure the viability of the project. Indeed, it would not have been possible to provide a holistic overview of policy development over a 70-year period if greater focus had been placed on a narrower definition of the institution of energy policy.

Another potential shortcoming that one might identify is the omission of an analysis of the effect that environmental protection and concerns had on energy policy. Based on growing pollutions levels and issues of sustainability in the 1970s, environmental concerns contributed to the development of an energy policy to a considerable degree, if not as much as did the market

programme to the institutional framework (see for instance Talus 2013, Schubert et al. 2016). In awareness of the magnitude of the policy area addressing climate change and renewable energy sources (RES), an early decision was made to exclude these prominent themes from the analysis in order to maintain explanatory depth to the units of analysis under investigation. Incorporating institutional rules governing climate change and environmental concerns would have expanded the scope of the thesis to a considerable degree, hence, these policy areas where merely touched upon every so often and not investigated in depth.

7.4. Future Research

Given the possible limitations of this research discussed in the previous section, based on the insights acquired through the assessment of the empirical data, the findings of this thesis allude to a potential expansion of some of the analytical units. The most significant avenue for further research would be an extension of the theoretical model concerning critical junctures and their impact on the institutional matrix. As proposed by the findings of this research, a more fine-grained definition could be applied to generate further hypotheses about change: critical junctures affecting the whole institution and critical junctures altering smaller components of the institutional matrix. The interplay of these typologies and their distinct effects upon the institutional path would be a fruitful endeavour for further analysis. In addition, as highlighted by the analysis, both exogenous and endogenous factors contributed to the punctuation of the institutional equilibrium, which led to an alteration of the path. Whether this account holds for every momentous change to the institutional setup would require further investigated. Indeed, there is scope for a clearly defined ontology of critical junctures which could enhance our understanding of critical junctures still further.

The second opportunity for further research addresses the interplay of both typologies of critical junctures and their impact on the institutional rules for energy policy in the wider context of the EU's climate policy agenda and for renewable energy sources. It would be a fruitful undertaking to analyse the interplay of the SEA, understood as a critical juncture, and the environmental dimension of the policy area based on the proposed theoretical framework of this thesis. A multitude of contributions to the scholarly debate argue that one of the most influential avenues for promoting EU energy policy, and a main driving factor for strengthening the institutional setup, was reasoned through the attainment of environmental policy goals[15]. A next step could therefore be based on the examination of the policy sector in the context of the environmental dimension, and whether analytical units within the framework of HI could inform the generation of a set of new hypotheses addressing this particular part of the institution. Moreover, it would be of the greatest interest to see whether policy-making addressing the promotion of environmental goals follows similar notions of path dependence, increasing returns, policy learning and coordination effects, and unintended consequences. Furthermore, an investigation of how preferences are formed, whether they are based on rational calculations or ideational factors, and which logic is ultimately found to be most influential could yield interesting findings and complement this project. Such assertions could provide new insight into a policy sector, which is often said to be mainly dominated by strategic action.

[15] For further discussion see Tosun et al. (Eds.) 2015.

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Appendix

A full ethics review was conducted (see below). In terms of the interviews, the research project follows strict ethical standards as laid out by the University of Edinburgh ethics guidelines. Interviewees were informed and provided consent for the interviews to be recorded, transcribed and incorporated in the PhD thesis. Where interviewees objected to being mentioned by name, they were anonymised. When interviewees had no objections, their names were stated.

Ingmar Versolmann

Wednesday, 30th October 2019

Checklist for Level 1 Ethical Review

Potential risks to participants and researchers

Is it likely that the research will induce any psychological stress or discomfort? NO

Does the research require any physically invasive or potentially physically harmful procedures? NO

Does the research involve sensitive topics, such as participants' sexual behaviour or illegal activities, their abuse or exploitation, or their mental health? NO

Is it likely that this research will lead to the disclosure of information about child abuse or neglect, or other information that would require the researchers to breach confidentiality conditions agreed with participants? NO

Is it likely that participation in this research could adversely affect participants? NO

Is it likely that the research findings could be used in a way that would adversely affect participants or particular groups of people? NO

Will the true purpose of the research be concealed from the participants? NO

Is the research likely to involve any psychological or physical risks to the researcher, and/or research assistants, including those recruited locally?

NO

Participants

Are any of the participants likely to:

- be under 18 years of age? NO
- be physically or mentally ill? NO
- have a disability? NO
- be members of a vulnerable or stigmatized minority? NO
- be in a dependent relationship with the researchers? NO
- have difficulty in reading and/or comprehending any printed material distributed as part of the research process? NO
- be vulnerable in other ways? NO

Will it be difficult to ascertain whether participants are vulnerable in any of the ways listed above (e.g. where participants are recruited via the internet)? NO

Will participants receive any financial or other material benefits because of participation, beyond standard practice for research in your field? NO

Before completing the next sections, please refer to the University Data Protection Policy to ensure that the relevant conditions relating to the processing of personal data under Schedule 2 and 3 are satisfied. Details are available at: www.recordsmanagement.ed.ac.uk.

Confidentiality and handling of data

Will the research require the collection of personal information about individuals (including via other organisations such as schools or employers) without their direct consent? NO

Will individual responses be attributed or will participants be identifiable, without the direct consent of participants? NO

Will data files/audio/video tapes, etc. be retained after the completion of the study (or beyond a reasonable time period for publication of the results of the study)? NO

Will the data be made available for secondary use, without obtaining the consent of participants? NO

Informed consent
Will it be difficult to obtain direct consent from participants? NO

Conflict of interest
The University has a ‘Policy on the Conflict of Interest’, which states that a conflict of interest would arise in cases where an employee of the University

might be “compromising research objectivity or independence in return for financial or non-financial benefit for him/herself or for a relative or friend.” See: http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Conflict_of_Interest.pdf
Conflict of interest may also include cases where the source of funding raises ethical issues, either because of concerns about the moral standing or activities of the funder, or concerns about the funder’s motivation for commissioning the research and the uses to which the research might be put.
The University policy also states that the responsibility for avoiding a conflict of interest, in the first instance, lies with the individual, but that potential conflicts of interest should always be disclosed, normally to the line manager or Head of Department. Failure to disclose a conflict of interest or to cease involvement until the conflict has been resolved may result in disciplinary action and in serious cases could result in dismissal.

Does your research involve a conflict of interest as outlined above? NO